Calendar No. 819

101ST CONGRESS *2d Session*	SENATE	REPORT 101-460

MONEY LAUNDERING ENFORCEMENT AMENDMENTS OF 1990

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 3037

together with

ADDITIONAL VIEWS

SEPTEMBER 12 (legislative day, SEPTEMBER 10), 1990.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

39-010 WASHINGTON : 1990

S243-8

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Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 3037]

INTRODUCTION

On July 17, 1990, the Committee on Banking, Housing, and Urban Affairs, marked up and ordered to be reported a bill, the Money Laundering Enforcement Amendments of 1990, which contains the Truth in Savings and Investments Act, amendments to the Expedited Funds Availability Act, an amendment to the Home Equity Consumer Protection Act, the Counterfeit Deterrence Act, and the Coin Redesign Act. The legislation authorizes Federal depository institutions regulatory agencies to revoke charters, terminate deposit insurance and remove or suspend officers and directors of depository institutions involved in money laundering or monetary transaction reporting offenses; requires the Secretary of the Treasury to issue regulations concerning the identification of nonbank financial institutions subject to the Bank Secrecy Act; prohibits illegal money transmitting businesses; provides for the standardization of advertised yields on savings accounts and investments; requires uniform disclosure of key costs of such accounts and investments; amends the counterfeit deterrence statutes to address new technologies; modernizes U.S. circulating coin design and for other purposes.

PURPOSE OF THE LEGISLATION

The legislation contains five titles: Title I and II, the Money Laundering Enforcement Amendments of 1990; Title III, the Truth in Savings and Investment Act, amendments to the Expedited Funds Availability Act and the Home Equity Loan Consumer Protection Act; Title IV, the Counterfeit Deterrence Act; and Title V, the Coin Redesign Act.

The money laundering provisions contained in Titles I and II address gaps in money laundering deterrence and enforcement schemes. The legislation authorizes new penalties for convicted institutions and bank personnel to enhance deterrence and enforcement; improves cooperation between Federal and State authorities; improves oversight and enforcement of money laundering compliance programs of nonbank financial institutions; and addresses wire and other funds transfer transactions that currently are not monitored for detection of money laundering.

Title III reforms disclosure and advertising of savings accounts to enable consumers to compare different savings and investment products so that they can make informed decisions about investing their money. The legislation also corrects technical problems which have arisen with the implementation of the Expedited Funds Availability Act. Title III also amends the margin disclosure requirement of the Home Equity Loan Consumer Protection Act to ensure that such disclosure is made.

Title IV updates sections 474 and 504 of title 18, U.S.C., regarding counterfeiting of Federal Reserve notes and obligations, to expand the definition of instruments of counterfeiting to include new technologies. The legislation also broadens the term "counterfeit deterrents" to take into account emerging technologies that the Treasury Department will ultimately employ. Stronger penalties are authorized to deter counterfeiting.

Title V authorizes the modernization of the designs on the reverse sides of U.S. circulating coins, some of which are fifty-two years old, in order to better reflect today's values and accomplishments. The legislation eliminates the requirement that the eagle be placed on the quarter-dollar and half-dollar, thereby paving the way for new designs on circulating coins. The exception is the Susan B. Anthony dollar coin, which does not meet the twenty-five-year design requirement outlined in section 5112(d)(2) of title 31, U.S.C.

SUMMARY OF THE BILL

TITLE I. TERMINATION OF CHARTERS AND INSURANCE AND REMOVAL OF PARTIES

Sections 101 and 102—Revocation of charter of Federal depository institutions and termination of insurance of State depository institutions

This title authorizes new penalties for depository institutions that are convicted of money laundering. Whenever a federally chartered depository institution (national bank, federal savings association or federal credit union) is convicted of money laundering, the appropriate Federal regulator must hold a hearing to consider

revoking the charter of the institution. Whenever an institution is convicted of a currency transaction reporting offense, the regulator may, but is not required to, hold a revocation hearing.

The regulatory must consider the following factors at the hearing: (1) the degree to which senior management officials knew of, or were involved in, the solicitation of drug money or the money laundering operation; (2) the effect revocation would have on the adequacy of depository and credit services in the local community; (3) the institution's cooperation with law enforcement authorities; (4) the potential losses to the Federal deposit insurance funds and the Resolution Trust Corporation ("RTC") if the charter is revoked; and (5) whether the depository institution's compliance and deterrence programs clearly exceeded the programs required by law.

Whenever an insured state chartered depository institution is convicted of a money laundering offense, the Federal Deposit Insurance Corporation ("FDIC") Board (for state banks and state savings associations) and the National Credit Union Administration Board (for state credit unions) must hold a hearing to consider terminating deposit insurance. Whenever the insured state chartered institution is convicted of a currency transaction reporting offense, the relevant agency may, but is not required to, hold a hearing. The same factors as those considered for charter revocation must be considered at the insurance termination hearing.

Sections 103 and 104—Removal of parties

When a Federal bank regulatory agency determines that an institution affiliated party (such as a bank employee, consultant or independent contractor including attorneys, accountants and appraisers) committed a violation of the reporting requirements which was not inadvertent or unintentional, the regulatory agency may remove the party. When a Federal bank regulatory agency determines that an officer or director of an insured institution knew that a bank employee, consultant or independent contractor violated the money laundering or reporting statutes, the regulatory agency may remove the officer or director. The regulatory agency must consider whether or not the officer or director took appropriate action to stop, or to prevent the recurrence of, the violation.

When an institution affiliated party is indicted, but not convicted, of a criminal violation of the money laundering or reporting statutes, the Federal bank regulatory agency may suspend the party from the institution. If the party is convicted, the regulatory agency must remove the party from the institution. The party is then barred from participation in the depository institution industry unless such party receives prior written consent of the FDIC.

Section 105—Access by State financial institution supervisors to currency transaction reports

The legislation directs the Treasury Department to share information contained in reports filed pursuant to the Bank Secrecy Act with state financial institutions supervisory agencies.

TITLE II. MONEY LAUNDERING ENFORCEMENT

Sections 201 and 202—Identification of nonbank financial institutions and prohibition of unlicensed money transmitting businesses

The Secretary of the Treasury is directed to issue regulations requiring depository institutions to identify customers that are nonbank financial institutions, *e.g.,* money transmitters, check cashers, and foreign exchange dealers, and report information about those customers to the Treasury Department. Civil fines may be imposed for willful violations of these reporting requirements. The legislation also makes conducting a money transmitting business in violation of a state law where such operation is punishable under state law as a misdemeanor or felony, a Federal felony punishable by fines or imprisonment up to five years, or both.

Sections 203 and 204—Compliance procedures

The legislation authorizes the Secretary of the Treasury to promulgate regulations to address money laundering in general and thereby permits the promulgation of model "know your customer" procedures, *i.e.,* measures designed to verify the legitimate nature of a customer's business and to insure that account activity is commensurate with that business.

The Anti-Drug Abuse Act of 1988 authorized the Secretary to issue a temporary order to financial institutions in a certain geographic area to make special reports, for example, reports of cash transactions at a dollar threshold lower than $10,000. This legislation would strengthen that act by prohibiting financial institutions and their employees from disclosing the existence or terms of a special reporting order to any person except as prescribed by the Secretary of the Treasury.

Section 205—Recordkeeping of certain international funds transfers

Before January 1, 1991, the Secretary of the Treasury must promulgate final regulations requiring depository institutions, money transmitters, check cashers and others to keep records of international and other funds transfers and to submit those records to the Treasury Department upon request. In promulgating the regulations, Treasury must consider the usefulness of the records in criminal, tax or regulatory investigations or proceedings and the effect of recordkeeping on the cost and efficiency of the payment system.

Section 206—Interagency transfers of certain records

The legislation permits a government agency to transfer, without notice to the customer, financial records to the money laundering investigations divisions within the Treasury Department, including the Financial Crimes Enforcement Network ("FINCEN"), only for criminal or investigative purposes and with a written certification by the transferring agency that the records may be relevant to a violation of Federal criminal law. The records must be returned to the transferring agency upon completion of the investigation.

Sections 207 and 208—Studies

The legislation requires the Treasury Department to report to Congress in ninety days on the advantages and disadvantages of changing the size, denominations or color of U.S. currency or of requiring different colors of U.S. currencies for domestic and international use. The Justice Department is required to report to Congress in six months on the degree to which compliance with money laundering statutes and cooperation with law enforcement authorities would be enhanced by the issuance of prosecutorial guidelines.

TITLE III. TRUTH-IN-SAVINGS, EXPEDITED FUNDS AVAILABILITY, HOME EQUITY CONSUMER LOAN PROTECTION

Sections 301–316—Truth in Savings and Investments Act

Of this title Sections 301–316 reform savings account disclosures and advertising. It requires any solicitation or advertisement to disclose the annual percentage yield, using a standardized formula; any minimum balance or any minimum initial deposit required to secure the stated yield; regular fees or other conditions that could reduce the yield; and the penalties, if any, for early withdrawal. It requires interest to be calculated on either a day of deposit to day of withdrawal or an average daily balance basis. It requires depository institutions to provide account holders with information when they send periodic statements and establishes civil penalties when institutions fail to comply with the requirements of the title.

The SEC is required to consult with the Federal Reserve Board to ensure that its regulations for mutual funds are providing consumers with the information necessary to compare effectively savings and investments options.

Section 317—Expedited Funds Availability Act amendment

Section 317 of Title III contains a number of provisions which address certain problems that have arisen under the Expedited Funds Availability Act. The legislation clarifies the rules for next-day availability for cash, government checks and certain checks drawn on depository institutions; delays the permanent availability schedule for deposits at nonproprietary automated teller machines; grants the Federal Reserve Board the authority to promulgate regulations on the notice procedures required when certain enumerated exceptions to the availability schedules are invoked; applies the exceptions from the availability schedules under the Act to certain government and depository institution checks; and clarifies that States and their political subdivisions on which checks are drawn are subject to risk of loss in connection with any aspect of the payment system, including the payment of checks.

Section 318—Home Equity Loan Consumer Protect Act amendment

Section 318 of Title III contains one amendment to the Home Equity Loan Consumer Protection Act that requires lenders to disclose the margin, i.e., the number of points of interest which are added to the interest rate index amount to determine the interest rate the borrower must pay, under the offered plan.

TITLE IV. COUNTERFEIT DETERRENCE ACT OF 1990

Sections 401-404—Counterfeit deterrence

Title IV authorizes the Secretary of the Treasury to adopt distinctive counterfeit deterrents for exclusive use in the manufacture of United States securities and obligations and to clarify existing authority to combat counterfeiting. Title IV further defines the terms "plate," "stone," "thing" or "other thing"—the printing or reproduction devices, methods or other means used to make a counterfeit—to include electronic methods used for the acquisition, recording, retrieval, transmission, or reproduction, of any obligation or security unless such use is authorized by law. This definition therefore includes computers, laser printers, color copiers, color laser printers, and optical scanners. Title IV specifically authorizes the Secretary to establish a system to ensure the legitimate use of such technology and the retention of such computerized images or reproductions. Language is adopted to conform section 504 of title 18, United States Code, with the holding of the Supreme Court in *Regan* v. *Time, Inc.,* 468 U.S. 641 (1984), which held that the content or subject matter distinctions specified in section 504 violate the First Amendment of the Constitution. The legislation raises the penalties for the unauthorized possession of distinctive counterfeit deterrents adopted by the Secretary. Penalties also are raised for counterfeiting.

TITLE V. COIN REDESIGN ACT

Section 501-505—Coin redesign

Title V authorizes the Secretary of the Treasury to select and mint new designs for the reverse sides of the half-dollar, quarter, dime, nickel, and cent. The first coin chosen for redesign will have a design commemorating the 200th anniversary of the United States Constitution. This design will remain on that coin for a period of two years, after which that Bicentennial coin will be redesigned. Obverse of these coins will contain the current likenesses, but may be considered for redesign. Specific thematic representations—including the Bill of Rights—while not exclusive, are suggested for consideration. Redesign of the five circulating coins will be phased in over a six-year period. Any profits resulting from the sale of numismatic items of the newly designed coins will be deposited in the general fund of the Treasury and may be used to reduce the national debt. The Susan B. Anthony dollar coin is not subject to redesign.

HISTORY AND DISCUSSION

TITLE I. TERMINATION OF CHARTERS AND DEPOSIT INSURANCE AND REMOVAL OF PARTIES

History of the legislation

Title I of the Committee Print incorporated the provisions of S. 2327, the "Depository Institution Money Laundering Amendments of 1990", introduced by Senators Kerry, Riegle, Metzenbaum, Garn, Bond, Bryan and Hatch on March 22, 1990. S. 2327 would authorize Federal depository institution regulatory agencies to revoke char-

ters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or monetary transaction reporting offenses.

On May 18, 1990, two panels of witnesses testified before the Committee on S. 2327. The first panel included Peter K. Nunez, Assistant Secretary for Enforcement testifying on behalf of the Department of the Treasury; Arthur L. Beamon, the Assistant General Counsel for Compliance and Enforcement testifying on behalf of the Federal Deposit Insurance Corporation; and Clyde H. Farnsworth, Jr., the Director of the Federal Reserve Bank Operations testifying on behalf of the Federal Reserve System. Witnesses on the second panel were Boris F. Melnikoff, Senior Vice President of First Wachovia Corporation in Atlanta, Georgia, and Vice Chairman of the American Bankers Association Money Laundering Task Force; Susan W. Sweeney, Senior Vice President and General Counsel of Deak International, Ltd.; and Stephen Wolf, Treasurer of Pay-O-Matic Corporation of Syosset, New York, and Treasurer of the Executive Committee of the National Association of Check Cashers.

Provisions of S. 2327, incorporated into Title I of the Committee Print, reflect many of the technical and procedural changes suggested by the witnesses. No amendments were offered to Title I of the Committee Print during the Committee's mark up on July 18, 1990.

Discussion

Termination of charters and insurance

Title I increases the penalties for money laundering offenses by depository institutions. Former Assistant Treasury Secretary Martoche testified on November 1, 1989, that estimated annual worldwide drug revenues are $300 billion, of which approximately $110 billion is generated in the United States. The bulk of the money is in small bills which can be difficult to launder. The initial placement of this bulk cash is the most vulnerable stage for interception and depository institutions therefore play a key role in catching money launderers.

Although most depository institutions have instituted deterrence and compliance programs and actively enforce those programs, problems still exist. Congress became acutely aware of the shortcomings of existing penalties as a result of the money laundering case against Bank of Commerce and Credit International ("BCCI"). *United States* v. *Bank of Credit and Commerce International, S.A.*, M.D. Fla., No. 88-330-CR-T-13(B) (filed January 16, 1990). Top level management of BCCI allegedly knowingly and intentionally encouraged or permitted the bank to receive and launder large sums of illicit profits. BCCI pled guilty and paid a forfeiture of over $14 million, potentially a mere fraction of its profits from laundering drug and other illicit profits, including profits of General Manuel Antonio Noriega. Committee and other members of Congress became concerned that such a plea agreement would send a message that the U.S. Government is not serious about prosecuting and stopping money laundering. Although this legislation does not address BCCI because that institution had an peculiar legal exist-

ence, the legislation addresses a perceived lack of authority to close institutions involved in extensive money laundering activities and specifically permits Federal regulatory agencies to close Federally chartered and Federally insured State chartered institutions convicted of money laundering crimes.

The Committee, recognizing the growing problem of criminal use of the nation's financial system to disguise and launder the proceeds from illegal activity, adopted this legislation to enhance existing regulatory powers and to focus regulatory efforts in this area of national concern. A depository institution engaging in a criminal activity should be particularly aware that its charter and its Federal deposit insurance come as a matter of privilege, not right, and may be terminated when appropriate, by the Federal regulators.

At least one witness raised the concern that the addition of money laundering as a specific ground for revoking charters, terminating insurance, and removing institution affiliated parties could be interpreted to limit somehow the existing general authority of the Federal regulators to take those actions for offenses not specifically addressed by statute. That is not the intention of this legislation. This legislation adds to the Federal banking agencies' enforcement powers in order to address a specific area of national concern. By providing specific language allowing the Federal banking agencies to revoke charters and terminate insurance for money laundering and monetary transaction reporting offenses, the Committee does not in any way intend to limit the Federal banking agencies ability to take action for violations, offenses, acts or omissions not specifically enumerated. Nor is the legislation intended to limit, in any way, the wide latitude and discretion Federal banking regulators now have to determine what constitutes unsafe or unsound banking practices.

Nevertheless, some questions were raised about the ability of the Federal government to close down an institution with a policy of soliciting illicit money and in which senior management officials knew of the money laundering. Current law clearly authorizes fines and imprisonment for violations of the money laundering and transaction reporting statutes. Current law also permits Federal regulators to close an institution found to be in an unsafe and unsound condition which may not always be readily demonstrated in cases of money laundering. Under current law, Federal insurance fund regulators may terminate the deposit insurance of a Federal or State chartered institution that has violated any law or regulation but must grant the institution a 30-day period to correct the violation. The Committee determined that the correction period is not applicable or appropriate with respect to money laundering violations.

The legislation provides that, when a Federal bank, savings and loan or credit union is convicted of a money laundering or reporting violation, the Attorney General must provide a written notice to the appropriate Federal regulatory agency. Federal bank regulatory agencies were concerned that they would not otherwise be aware that the institution had been found guilty of a criminal offense and so would not trigger the hearing notices required by this legislation.

When the regulatory agency receives notice from the Attorney General that an institution is convicted of a money laundering crime, i.e., violations of sections 1956(a) or 1957 of Title 18, U.S.C., the regulatory agency must hold a hearing to consider revocation of the institution's charter. Only section 1956(a) was specified because the Committee does not intend that the section be triggered by the imposition of a civil penalty under section 1956(b). If the institution is convicted of a transaction reporting offense, the regulatory agency may, but is not required to, hold a revocation hearing. Similar provisions apply with respect to hearings by the Federal insurer to consider termination of insurance of a convicted State chartered depository institution. The agency must consider and weigh certain factors before a charter is revoked or insurance is terminated.

It is important to note that the Committee intends that all proceedings taking place under this section, as well as all proceedings required by this legislation, be conducted with appropriate procedural gurantees and be subject to judicial review. For this reason, the Committee specifically provides that existing procedures, except for the period for correcting a violation, apply to the hearings conducted under this section.

The successor liability provision provides other important protections. That provision provides protection to successors to the interests of, or acquirers of, depository institutions that acquire the institution in good faith and not for the purpose of evading the provisions of the legislation. On August 7, 1989, the Fifth Circuit ruled in *Alamo Bank* v. *United States,* 880 F. 2d 828, that Alamo was liable for the failure to file certain currency transaction reports of a bank that it acquired almost three years after the alleged criminal conduct. The Supreme Court decided not to review the case. Since a charter revocation results in the termination of a depository institution, this decision may have a chilling effect on mergers of depository institutions. Therefore, the amendment provides protection for good faith acquisition of depository institutions.

Finally, the Committee is aware that an institution's conviction and a regulatory agency's determination could have potentially grave consequences for the community it serves. Because of the Committee's concern that the hearing notices not provoke undue concern in the community before any decision has been taken, the Committee specifically provided that only final notice of the order to terminate an institution's charter or insurance be made public. In light of the State banking supervisor's interest in the safety and soundness of the banking system and the needs of the local community, however, the Legislation allows the State supervisor to receive the initial hearing notice sent to the State depository institution. In addition, the Legislation incorporates current law which provides that when insurance is terminated, the institution's existing insured deposits will remain insured for six months to two years. The Committee understands that if an institution loses its charter it will be treated the same as any other institution that fails and that the termination provisions of current law apply to insure temporarily the institution's deposits; the Committee, therefore, concluded that no specific provision was necessary to accomplish this result.

Removal of parties

Former Assistant Secretary Salvatore Martoche also testified at the hearing on November 1, 1989: "we have discovered that money launderers have learned that they do not have to buy a bank. All they have to do is buy a banker." The Committee intends that an institution affiliated party engaged in money laundering or violations of currency reporting requirements, or an officer or director who knows of such activities or violations, be aware that, in addition to any other penalty, they may also be suspended or removed from participating in the affairs of the institution or the industry.

In comments prepared for the Committee's May 18 hearing, Robert B. Serino, Deputy Chief Counsel for Policy, writing on behalf of the Office of the Comptroller of the Currency ("OCC") stated:

> The primary responsibility for compliance with the law appropriately rests with each financial institution since it is the first and most important line of defense against money laundering. At the same time, the OCC has continuing responsibility to monitor the national banking system and to ensure that national banks use safe and sound banking practices and comply with the law. Accordingly, in our supervisory efforts, we focus on both management's and the board of director's ability and commitment to ensure behavior that is both prudent and in compliance with the law. It has been our experience that no amount of examination or supervision works as well as a bank's own system of internal controls.

In order to encourage management's active involvement in money laundering deterrence efforts, the Committee specifically provides penalties for violators. Officers and directors should be responsible for creating, implementing and monitoring an effective program of money laundering deterrence within depository institutions and for taking steps to ensure their employees comply with the program.

Current law provides for the removal of "institution affiliated parties." i.e., bank employees, consultants, joint venture partners and independent contractors, such as attorneys, accountants, appraisers, and others. However, current law requires the agency to establish a number of elements. In order to remove a party, the agency must determine that: (1) the party violated a law or regulation, engaged in an unsafe or unsound practice or committed an act or omission which constitutes a breach of the party's fiduciary duty; (2) such violation, practice or breach caused the depository institution to suffer financial loss, the interests of depositors were prejudiced or the party received financial gain; and (3) such violation, practice or breach involves personal dishonesty or demonstrates willful or continuing disregard for the safety or soundness of the institution. The Committee believes that these findings are not appropriate for money laundering violations because they may prevent agencies from rapidly removing parties who have engaged in money laundering. Moreover, current law specifically provides for removal for violations of the Dispository Institution Manage-

ment Interlocks Act without establishing the elements listed in the general removal provision. This latter approach is more appropriate for certain money laundering crimes; therefore, the legislation amends the current provision for specific violations.

The Committee does not intend to limit current Federal regulatory authority. The Committee recognizes that Federal regulators already have authority to remove institution affiliated parties and does not intend in any way to limit the authority of the Federal regulators to take action for violations, offenses, acts or omissions not specifically enumerated. Nor is the legislation intended to limit, in any way, the wide latitude and discretion Federal banking regulators now have to determine what constitutes unsafe or unsound banking practices. The legislation provides for removal when the agency determines that an institution affiliated party violated the transaction reporting requirements of the Bank Secrecy Act, unless such violation was inadvertent or unintentional. The agency also may remove an officer or director of an insured depository institution if the agency determines that such party knew that an institution affiliated party of the institution violated the money laundering or reporting requirements statutes. In determining whether an officer of director of an insured depository institution or credit union "had knowledge" that an institution affliated party violated subchapter II of chapter 53 of title 31, U.S.C. or section 1956 or 1957 of title 18, U.S.C., the Committe intends that the appropriate Federal regulatory agency determine whether there was actual knowledge or a "conscious purpose to avoid learning the truth." The "knowledge" standard, therefore, covers actual knowledge of a violation and actions by officers and directors that evidence a conscious disregard or deliberate ignorance of known circumstances that should reasonably alert such officers or directors to the high probability of such violations. The agency must consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation by the institution affiliated party. A supervisor who monitors employees and takes appropriate action should not be removed.

The suspension, hearing and judicial review provisions of existing law apply to removal for money laundering and reporting requirement offenses. Therefore, prior to removing the party, the agency must hold a hearing after serving notice upon the party except that the party may be suspended pending the hearing procedures if the agency determines that suspension is necessary for the protection of the depository institution or the interests of depositors.

As under current law, the legislation provides separate provisions for institution affiliated parties charged with felonies. Under current law, when a party is charged in an indictment, information or complaint, with the commission of, or participation in, a crime involving dishonesty or breach of trust, the appropriate regulatory agency may suspend that party from the institution if continued service or participation by such party may pose a threat to depositors' interests or impair public confidence in the institution. If the party is convicted or enters into a plea agreement, the agency may remove the party if continued service or participation by such party may pose a threat to depositors' interests or impair public

confidence in the institution. The legislation permits suspension of a party indicated with money laundering offenses from an institution when the agency determines it appropriate. The agency need not show that continued service or participation by the party may pose a threat to depositors' interest or impair public confidence because the Committee determined that those conditions may not be applicable to money laundering and transaction reporting offenses in all cases. When the party is convicted of money laundering or transaction reporting offenses, the regulatory agency must remove the party from the institution. Since criminal procedures apply to a party's indictment or the conviction, the agency is not required to automatically conduct an administrative hearing under existing law. However, the party suspended or removed may invoke the review procedures of existing law, requesting an agency hearing and judicial review.

In response to an agency's suggestions, a provision amending 12 U.S.C. 1829 was added to prohibit any person who has been or is convicted of money laundering from serving as a director, officer, or employee of an insured bank except with the written consent of the Federal Deposit Insurance Corporation.

The Committee also amended section 5319 of title 31, U.S.C., to require that the Secretary of the Treasury provide currency transaction reports to State financial institutions supervisory agencies for supervisory use only. Current law provides for the sharing of reports filed pursuant to the Bank Secrecy Act by the Treasury Department with other federal agencies with certain limitations. This provision responded to the November 1, 1989 testimony of the Florida State Comptroller about the importance of currency transaction reports to State supervisory and law enforcement efforts. The Committee intends that State financial institution supervisory agencies and Federal supervisory agencies cooperate to close financial institutions to money laundering activity. Sharing of information with State supervisory agencies also would discourage States from enacting duplicative reporting requirements for financial institutions.

TITLE II. MONEY LAUNDERING ENFORCEMENT

History of the legislation

Title II of the Committee Print incorporates most of the provisions of S. 2561, the Money Laundering Enforcement Act, introduced by Senator D'Amato on May 17, 1990. S. 2561 contained provisions to regulate nonbank financial institutions and international and other funds transfers, miscellaneous provisions to enhance money laundering enforcement under existing statutes and to amend the Right to Financial Privacy Act.

The issues addressed in S. 2561 were considered at the hearing before the Committee's Subcommittee on Consumer and Regulatory Affairs on November 1, 1989, which was chaired by Senator Kerry, and at the Subcommittee's field hearing in Fort Lauderdale, Florida, on December 4, 1989, which was chaired by Senator Graham. Witnesses on November 1 were: Gerald Lewis, Comptroller, State of Florida; Timothy D. Mahoney, Director of Special Investigations Division, New York State Department of Banks; John

Lee, Executive Director, New York Clearing House Association; Chuck Morley, Morley Group; Joseph Madison, Josseph Madison Associates, Inc.; L. Don Sargent, President and CEO, American Commerce National Bank, representing the Independent Bankers Association of America; Jerome S. Gagerman, President, National Check Cashers Association; Boris Melnikoff, Senior Vice President, First Atlanta Corporation, representing the American Bankers Association. Witnesses on December 4 were: Charles Saphos, Chief Narcotics and Dangerous Drugs Section, Criminal Division U.S. Department of Justice; Merlin Heye, District Director, Fort Lauderdale District, Internal Revenue Service; Leon Guinn, Assistant Regional Commissioner, Enforcement, U.S. Customs Service; Larry Fuchs, Deputy Comptroller, Office of the Florida Comptroller; Peter Fowler, Vice President and Department Head, International Private Banking, Barclays Bank in Miami; Charles Intriago, Foyd, Pearson, Richman, Greer Professional Association and Publisher of Money Laundering Alert. The specific provisions of S. 2561 where addressed in the Committee's hearing on May 18, 1990.

Provisions of S. 2561 subsequently were incorporated into Title II of the Committee Print. The Committee Print, however, incorporated certain technical changes to S. 2561 and excluded the bill's amendments to the Internal Revenue Code, the Right to Financial Privacy Act and the Racketeer Influenced and Corrupt Organizations Act. A new amendment to the Right to Financial Privacy Act to facilitate the operation of the Financial Crimes Enforcement Network ("FINCEN") was included in the Committee Print.

The Committee met on July 17, 1990, to consider the Committee Print and adopted Title II with two amendments. First, an amendment offered by Senator D'Amato requires the Department of the Treasury to conduct a study of the advantages for money laundering enforcement and any disadvantages of changing the size, denominations or color of U.S. currency, or of providing that the color of U.S. currency in circulation in countries outside the United States be a different color from that of the currency circulating in the United States. Second, an amendment offered by Senator Kerry requires the Attorney General to determine to what extent compliance with money laundering deterrence and reporting requirements would be enhanced by the issuance of prosecutorial guidelines and to report the findings to Congress not later than six months after enactment.

Discussion

Regulation of money transmitters, check cashers and other nonbank financial institutions

In the past, drug money laundering deterrence legislation has focused on depository institutions. However, as deterrence and compliance programs by depository institutions have improved, money launderers with illicit profits have found new avenues of entry into the financial system. Peter Nunez, the Assistant Secretary of the Treasury for Enforcement, testified before the Committee in May that "[i]t is undisputed that as Bank Secrecy Act compliance by banks has improved, drug money launderers have and will continue to turn to [nonbank financial institutions] to convert street cur-

rency into monetary instruments and even to transmit abroad the proceeds of drug sales." Increasingly, money launderers are using money transmitters, check cashers, money exchanges and other nonbank financial companies for initial placement and the number of such businesses is growing rapidly in some States.

Timothy Mahoney, the Director of Special Investigations for the New York State Banking Department, testified before the Subcommittee on Consumer and Regulatory Affairs last November:

> As banks became more sophisticated in reporting currency transactions, drug dealers became more creative and began to rely increasingly on unlicensed and illegal money transmitters, on check cashers, and on money order vendors, all users and sources of high amounts of cash * * *. It is primarily the unlicensed money transmitter who provides the best means of laundering money and is most often used to structure illegal transactions.

The New York Times reported on September 25, 1989, in an article entitled "Unassuming Storefronts Believed to Launder Drug Dealers' Profits," that State banking regulators around the country have found that thousands of small, inner-city money transmitting and check cashing businesses are sending billions of dollars to drug dealers in South America and Asia and that the majority of these businesses are illegal, unlicensed and unregulated.

These companies vary in size, in the scope of their services and in the extent to which they are regulated. Money transmitting, check cashing and money exchanging are regulated at the State level. Although most but not all States have some form of licensing requirements, in many instances, insufficient State resources have been devoted to regulation and supervision of the industries or to the pursuit of criminal cases against illegal operators.

At the Federal level, regulations permit depository institutions unilaterally to exempt transactions by certain categories of businesses, including licensed check cashers, from the currency transaction reporting requirements without prior approval from the Treasury Department. Licensed check cashing and money transmitting businesses are required to file Bank Secrecy Act reports. However, the Treasury Department testified on May 18, 1990, that compliance by these institutions with the Bank Secrecy Act and with other anti-money laundering measures is generally poor. Peter Nunez testified that the IRS has had difficulty monitoring these institutions' compliance because of the vast number of entities and the difficulty of identifying them. He testified that, as a result of these problems, and State jurisdiction over these entities, Federal law enforcement agencies have tended to leave oversight to the States. Since the Federal government has left regulation of these businesses to the States and the States have not devoted sufficient resources to the effort, these industries represent a gaping hole in the money laundering deterrence effort.

The legislation does not completely solve these problems, but it significantly increases the Federal role in working with the States to deter money laundering. The legislation does not preempt State laws. Instead, it provides for an expanded Federal role in a way that enhances and supplements State regulation.

The legislation requires the Secretary of the Treasury to issue regulations by July 1, 1991, requiring that depository institutions identify their nonbank financial institution customers—money transmitters, check cashers, foreign exchange dealers, issuers and redeemers of traveller's checks and others. Depository institutions will provide the name and other information about these financial institutions customers to the Secretary as prescribed by the regulations. The Treasury Department will provide the list to State supervisory agencies for supervisory purposes. A new civil penalty of up to $10,000 per day applies to persons including the nonbank financial institutions and their officers, directors and employees who misrepresent the nature of their businesses to depository institutions. The criminal provisions contained in 31 U.S.C. 5322 of the Bank Secrecy Act also apply.

This reporting will assist Federal and State enforcement agencies in identifying the universe of nonbank financial institutions so that the agencies can communicate directly with the institutions on deterrence and compliance procedures. The Committee anticipates that as part of the Treasury Department's regulations, guidelines on identifying these financial institutions will be issued. In this way, if a depository institution follows the Treasury guidelines and reasonably relies on a misrepresentation by its customer, the depository institution will not be liable.

The legislation also creates a Federal crime for knowingly operating a money transmitting business in violation of State law where the State requires a license and makes unlicensed money transmitting punishable as a misdemeanor or felony. This latter provision is modeled on 18 U.S.C. 1955, "Prohibition of illegal gambling business," which makes it a federal crime to operate a gambling business in violation of state law. The Racketeer Influenced and Corrupt Organizations Act is another example of a Federal statute where violations of certain State laws are predicate offenses for Federal penalties. The Committee's legislation provides for money penalties, imprisonment up to five years, and forfeiture of property, including money, used in the violation.

Finally, the wire transfer reporting requirements include money transmitters, check cashers and foreign exchange dealers, not only depository institutions. All of these institutions will be required to keep records on funds transfers and, when requested, provide those records to the Treasury Department.

International wire and other funds transfers

Wire transfers appear to be a major weak link in law enforcement efforts against money laundering. Recent investigations of significant money laundering operations, in particular Operations Polar Cap and C-Chase, have revealed the use of international wire transfers in money laundering operations. Once money is deposited in a depository institution, it can be transmitted by wire from that institution to an institution outside the country, around the world and back into the country. The Federal Reserve Board estimates that one trillion dollars in international wire transfers occur each day, making it difficult for law enforcement agencies to trail money launderers. Detecting and tracing laundered money would

be facilitated if certain basic information were required to be recorded as part of every transaction.

The Committee heard extensive testimony about the operation of wire transfer systems and the use of international wire transfers in laundering drug money. In November 1989, John Lee, Executive Director, New York Clearing House Association ("CHIPS"), and two private consultants, Joseph Madison and Chuck Morley, testified on wire transfers. Two principal payment networks exist in the United States, CHIPS and FedWire which is operated by the Federal Reserve System. Limited purpose private networks also exist. Mr. Lee testified that CHIPS was in the process of designing a CHIPS format to allow more information, such as the purpose of a payment, to be recorded and to pass through the system. Mr. Lee explained that the information can be formatted into the system, but verification of the information or formatting of qualitative questions would raise problems for the operation of CHIPS. Mr. Madison, a consultant specializing in the electronic funds transfer business, compared the information currently required by CHIPS and FedWire. He recommended that both CHIPS and FedWire require banks that use their networks to identify the originator and beneficiary by name and that transactions not containing this data be rejected by the networks. He suggested that procedures to handle legitimate exceptions to this rule be developed. Clyde H. Farnsworth of the Federal Reserve Board testified in May 1990 that any regulations adopted by the Treasury Department should focus on ensuring that the information supplied pursuant to the existing wire transfer formats be complete and that certain classes of international wire transfers that are most likely to be used in money laundering be targeted. The Federal Reserve Board's testimony expressed concerns that the efficiency of large-dollar wire transfer systems not be disrupted by excessive information demands.

The Treasury Department has authority under existing law to require financial institutions to keep records about wire transfers but has not specified what types of information must be recorded. In October 1989, the Treasury Department issued an Advance Notice of Proposed Rulemaking asking for comments on a number of possible proposals to address regulation of international wire and other funds transfers. The Committee believes that prompt adoption of recordkeeping regulations by the Secretary of the Treasury is desirable. The legislation therefore requires the Treasury Department, after consultation with the Federal Reserve Board and State banking departments, to issue final regulations by January 1, 1991, that require depository institutions, money transmitters, check cashers and money order operations to maintain records of payment orders involving international and other funds transfers and to make those records available to the Secretary upon request. Nonbank financial institutions were included to address the increasing use of the institutions by money launderers to wire funds overseas. Typically, these institutions take a payment order from the customer and forward the order to a depository institution or, less frequently, to another smaller private payment network.

The legislation requires balancing costs and benefits. Specifically, in prescribing the regulations, the Secretary must consider the usefulness in criminal, tax or regulatory investigations or proceedings of any record required to be maintained and the effect the recordkeeping will have on the cost and efficiency of the payment system. The Committee expects that the costs and burdens on financial institutions will be considered as part of the analysis of the impact on the payment system. Nevertheless, the Committee anticipates that the Treasury Department will determine what types of information the wire systems realistically can incorporate in their payment order forms and that the regulations result in the production of information that is useful to law enforcement authorities and not merely a costly and burdensome generation of data.

Other enforcement measures

The legislation expands the regulatory authority of the Secretary of the Treasury to permit the promulgation of "know your customer" rules. Law enforcement authorities have discovered that, while transaction reports are important tools in deterrence and enforcement, reports by depository and financial institutions of suspicious transactions or suspicious activities can greatly enhance enforcement. The first step in making effective reports of suspicious activity and protecting institutions from being used to further money laundering, is a program designed to verify the legitimate nature of a customer's business and to ensure that account activity is commensurate with that business. "Know your customer" rules also should require employee training, the designation of compliance officers, audit procedures and other measures.

Many depository and financial institutions have "know your customer" programs, but others do not and, among those that do, the quality is variable. Therefore, regulations requiring such programs and setting forth guidelines are needed. Current law authorizes the Secretary to issue regulations to ensure compliance with the Bank Secrecy Act reporting requirements. Therefore, under current law, the Treasury Department's "know your customer" regulations would be based on the Department's authority to ensure compliance with cash transactions reporting under 31 U.S.C. 5313 and compliance with regulations pertaining to transactions with foreign financial agencies under 31 U.S.C. 5314. The legislation clarifies the Treasury Department's authority to promulgate regulations to "guard against money laundering" generally, whether or not cash or foreign transactions are involved. The Treasury Department indicated that the regulations will be applicable to both depository and other financial institutions.

The legislation also amends a Bank Secrecy Act provision added by the Anti-Drug Abuse Act of 1988. Section 5326 of title 31 grants the Treasury Department authority temporarily to require financial institutions in certain geographic locations to report transactions at a lower dollar threshold in order to detect the practice of "smurfing," conducting a number of transactions each in amounts less than $10,000. To prevent money launderers from circumventing these orders, this legislation prohibits financial institutions from disclosing the existence or terms of the order to any person, except as prescribed by the Secretary. Currently, orders sent to fi-

nancial institutions instruct employees to maintain secrecy with respect to the order. By specifically prohibiting disclosure, however, the legislation permits action against employees who make improper disclosures. The Committee anticipates that the orders will continue to include the secrecy notice to employees. The Committee also received comments from the Office of Thrift Supervision questioning whether or not institutions will be permitted to disclose the existence and terms of a temporary order to the institution's primary regulator. Certainly, the Committee fully anticipates that the Treasury Department's regulations will permit such disclosures.

The legislation includes an amendment to the Right to Financial Privacy Act ("RFPA") to facilitate the operation of the Financial Crimes Enforcement Network ("FINCEN"). The Treasury Department created FINCEN to collect and analyze data to support money laundering and other financial crimes investigations. Currently, the RFPA permits records to be transferred to another Federal government agency only if the transferring agency certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency and only if the customer receives notice. Customer notice, however, may be delayed up to 180 days with a court order. The Committee is unaware of any case in which a court has denied a request for delay of customer notice.

With respect to criminal investigations, Congress adopted an exception to the general rule of customer notification for transfers of records to the Attorney General. The Anti-Drug Abuse Act of 1988 amended the RFPA to allow government agencies and departments, including depository institutions supervisory authorities, to transfer records to the Attorney General without customer notice with written certification by the transferring agency that the records may be relevant to a violation of Federal criminal law and that the records were obtained in the exercise of the agency's or department's supervisory or regulatory function. Furthermore, the records must be returned to the transferring agency when the investigation or prosecution is completed. This legislation expands the exception to permit the transfer of records to those divisions within the Treasury Department with responsibility for criminal investigations of money laundering, subject to the same restrictions as are applicable to the transfer of records of the Attorney General.

The Committee is mindful that the RFPA has been extensively amended in recent years. The Committee determined, as did Congress on certain previous occasions, not to modify RFPA to permit unrestricted interagency transfers if "there is reason to believe that the records are relevant to a matter within the jurisdiction of the receiving agency or appropriate for analysis by the receiving agency for law enforcement purposes." Such a modification would have permitted interagency transfer of personal records with little constraint on their use or the duration of use. Instead, the Committee attempted to craft an amendment to facilitate money laundering investigations but also preserve privacy rights protections by limiting the transfer of records only for the purpose of criminal investigations of money laundering and only for the duration of the investigations. The duration of the investigation should be reasona-

ble and based on a legitimate belief that criminal activity has occurred.

The Committee adopted an amendment to require the Department of the Treasury, in consultation with the Department of Justice and the Drug Enforcement Administration, to report to the Committee within 90 days on the advantages for money laundering enforcement and any disadvantages of changing the size, denominations, or color of U.S. currency, or of providing that the color of U.S. currency in circulation abroad be different from the color of U.S. currency in circulation in the United States. In recent years, several proposals have been made to change the U.S. currency as a way of thwarting money launderers. In a letter dated December 12, 1989, the Drug Enforcement Administration ("DEA") proposed to the Treasury Department that the Department consider printing two distinct currencies, one for domestic use and another for international use. The DEA proposed that the two currencies would be exchanged only at U.S. controlled financial institutions which are subject to transaction reporting and other money laundering deterrence requirements. The objective of the DEA proposal would be to make the domestic currency earned by drug dealers in the United States worthless abroad and so discourage the smuggling of cash out of the United States. Another proposal by former Secretary of the Treasury, Donald Regan, would provide for printing of new $50 and $100 bills of a different color or size. A very short notice period would precede the introduction of the new bills to prevent money launderers from exchanging their bills. Exchanges of large numbers of old bills for new bills would be reported to the Treasury Department. The proposal for the study was raised at the Committee's May hearing and Mr. Nunez agreed that the Treasury Department could undertake such a study.

The Committee also adopted an amendment directing the Department of Justice to conduct a study of the extent to which compliance with the Bank Secrecy Act and money laundering statutes and cooperation with law enforcement authorities would be enhanced by issuing prosecutorial guidelines. Depository institutions have expressed concerns about criminal and civil liability for reporting suspicious transactions to law enforcement agencies. Banks are required by statute or regulation to file currency transactions reports, report suspicious and criminal activity, and avoid participation in structuring money laundering or receiving the proceeds of criminal activities. Bankers fear that, if they report suspicious activities or make transaction reports and continue to do business with the customer, they will be prosecuted by the government for participation in money laundering. Bankers argue, however, that, if they make such reports to the government and discontinue doing business with the customer, they may be subject to law suits for breach of contract or lender liability. The Right to Financial Privacy Act currently provides financial institutions a safe harbor from customer suits based on the financial institution's report to government authorities. Bankers argue, however, that the safe harbor may not protect them from suits when the bank has refused to do business with the customer after having made a report.

The intent of the amendment adopted by the Committee is for the Justice Department to consider adopting a program similar to

the "Department of Justice Guidelines Regarding the Department of Defense Voluntary Disclosure Program." Those guidelines do not provide a guarantee that voluntary disclosure will prevent criminal prosecution. Instead, the guidelines identify a variety of factors that should be considered in determining whether to prosecute a "volunteer corporation." For example, the factors contained in the Justice Department's DOD Guidelines include: whether the disclosure was voluntary; whether the disclosure was made promptly after the illegal activity was discovered; whether the corporation had a preexisting compliance program designed to prevent illegal activity; whether the illegal activity was extensive or pervasive; whether upper-level corporate managers were involved in the illegal activity; and other factors.

As a policy and law enforcement matter, Congress, together with the law enforcement agencies, needs to consider whether banks should be encouraged to make reports and continue to do business with the customer about whom the report was made or whether banks should continue doing business with the customer after making the report to the government. By terminating business, the depository institution will not further money laundering by criminals. By continuing to do business, however, law enforcement agencies would have the opportunity to investigate the activity without alerting that customer and permitting money launderers to flee.

Creating a safe harbor for banks from third party suits raises additional questions. The Committee is aware of proposed amendments that would establish safe harbors from third party suits when a banker reports suspicious activity to the government and discontinues business with that customer. Under such a provision, an innocent customer could not recover damages in court, regardless of the bank's motive or purpose. This sort of provision would allow a bank to create its own safe harbor simply by making the report of "suspicious transactions," which currently are not defined. Nevertheless, the Committee is sympathetic to the current position of banks but requires more information in order to assess the problem and policy.

TITLE III. TRUTH-IN-SAVINGS, EXPEDITED FUNDS AVAILABILITY, HOME EQUITY CONSUMER LOAN PROTECTION

History of the legislation

Truth in Savings and Investments Act

Title III of the legislation, the "Truth in Savings and Investments Act" contains provisions designed to enable consumers to compare different savings and investment products so that they may make informed decisions about where to invest their money. Prior to 1980, it was relatively easy for consumers to compare different deposit accounts because strict Federal regulation permitted very little variation in terms and conditions. As interest rate deregulation proceeded during the 1980's, depository institutions were freed to offer not only a broader range of rates, but entirely new instruments with widely varying terms and conditions. As Alan Fox, former Legislative Representative of the Consumer Federation of America, testified before the Consumer Affairs Subcommittee on

August 5, 1987, "[t]his transformation of the market for financial services has benefitted those consumers with adequate resources to take advantage of their new options. For most consumers, however, the expansion of options has not been matched with the expansion of information necessary to evaluate options and make informed choices."

The problems—and opportunities—for consumers have been further complicated by the rise of alternative investment products. With the interest rates on deposit accounts still regulated in the late 1970's and early 1980's, consumers shifted large amounts of their savings to money market mutual funds, which were not subject to government regulation. While such funds were providing higher returns than most short term depository institution instruments, they were not directly comparable to deposit accounts because they were not covered by Federal deposit insurance and did not guarantee a future rate of return. Instead, they were only able to provide yield data reflecting past performance.

To address the concerns about inadequate disclosure of the key conditions of deposit accounts, and the problems of nonstandardized terms, former Banking Committee Chairman Proxmire and Senators Dodd and Heinz introduced S. 1507 on July 21, 1987. That bill would have required the disclosure of key terms in all advertisements, and a more comprehensive list of terms and conditions in specific schedules.

On August 5, 1987, the Consumer Affairs Subcommittee conducted a hearing at which witnesses from depository institution trade associations, a mutual fund trade association, consumer groups, the Securities and Exchange Commission and the Commissioner of Banking for the State of Connecticut appeared.

Mr. Fox of the Consumer Federation emphasized the importance of consumers having standardized and complete information for the marketplace to operate efficiently. He pointed out that consumers are often not given such relevant information as "the basis of compounding, whether the interest is paid on an average or low balance, any minimum balance required to receive interest, and how the minimum balance is calculated." Without such information, consumers cannot compare yields of deposit accounts. Further, he noted "the difficulties of comparing time deposits of varying maturities and accounts that offer different rates of interest on different amounts or over the life of the deposit, or that vary the rate of interest to reflect market changes." Moreover, he noted that these considerations do not even address the range of service fees that can be imposed.

Mr. Fox expressed specific concern about banks' use of the "investable balance" method, whereby some banks pay the disclosed rate of interest on only a portion of the account, usually citing the need to put a certain portion into reserves held by the Federal Reserve System. He also cited the enormous differences in return between accounts that calculate interest using an average daily balance method as contrasted with a low balance method, which calculates interest using the consumer's lowest balance for any day during the period. Mr. Fox suggested for comprehensive disclosure, the use of a standardized balance calculation method, and a ban on the use of the investable balance method.

The depository institutions' representatives supported the intent of S. 1507 but called on the Committee to apply analogous provisions to all mutual funds, pointing out that consumers view mutual funds as competitors for the same dollars. Recently, these industry groups have expressed concern that this legislation would add to "the industry's regulatory burden."

Both the SEC and the Investment Company Institute, a trade association for mutual funds, testified about the comprehensive SEC regulations for money market mutual funds. As a result of the hearings, S. 1507 was revised and then included as Title VI of S. 1886, the Proxmire Financial Modernization Act of 1988. That legislation passed the Senate on March 30, 1988, by a 94–2 vote. However, the House failed to act on similar legislation and the bill was not adopted in the 100th Congress.

In the 101st Congress, Senator Dodd introduced S. 307, the Truth in Savings and Investments Act, on January 31, 1989. The bill is cosponsored by Senators Lieberman, Riegle, Heinz, D'Amato, Dixon and Bond. Inasmuch as the conditions that gave rise to the legislation have not changed since Senate action in 1988, the Committee chose to include the provisions of S. 307, with minor changes, as Title III of the Money Laundering Enforcement Amendments of 1990.

Expedited Funds Availability Act

Section 317 of Title III amending the Expedited Funds Availability Act, was included as part of the Committee Print after consideration by the Subcommittee on Consumer and Regulatory Affairs. The legislation was developed in response to legislative proposals submitted to the Senate Banking Committee by the Federal Reserve Board. At the July 17 markup the Committee rejected by a vote of 11 to 10 an amendment offered by Senator Garn to Section 317 which would have lengthened the permanent availability schedule for local checks under the Expedited Funds Availability Act.

On February 27, 1990, the Subcommittee on Consumer and Regulatory Affairs held an oversight hearing on the Expedited Funds Availability Act. The Federal Reserve submitted six recommended amendments to the Act along with its testimony. The witnesses all commented on the desirability or inadvisability of these amendments. The witnesses at the hearing were: Wayne D. Angell, Member of the Board of Governors, Federal Reserve System; David T. Wittman, Vice President/Manager, Chase Manhattan Bank, representing both the American Bankers Association and Consumer Bankers Association; Stephen S. Cole, President, Cash Station, Inc., representing Electronic Funds Transfer Association; Margaret N. Rectanus, Vice President/Assistant General Manager, Credit Union Products and Services, representing the Credit Union National Assocation, Inc.; Michelle Meier, Counsel for Government Affairs, Consumers Union of United States, Inc.; and Edmund Mierzwinski, Consumer Lobbyist, U.S. Public Interest Research Group.

The Financial Modernization Act of 1988, which was approved by the Senate on March 30, 1988, included a provision similar to the safeguard exception amendment included in this legislation. The

Subcommittee also considered the October 1989 report to Congress of the Federal Reserve Board entitled "Deposits at Nonproprietary Automated Teller Machines."

Home equity consumer loan protection

The Home Equity Loan Consumer Protection Act was signed into law on November 23, 1988. The Act, among other things, requires lenders to disclose key cost terms to borrowers in advance of the signing of a home equity loan contract. On June 9, 1989, the Federal Reserve Board issued its final rule implementing the Act. The rule did not include a requirement for the lenders to disclose the margin, the number of points that are added to the interest rate index to determine the interest rate the borrower must pay on a variable rate home equity loan. The effect of such an interpretation of the statute is to deprive borrowers of one of the key terms needed to determine the cost of the loan. In order to remedy this defect, the Committee adopted a provision requiring the disclosure of the margin.

Discussion

Truth in Savings and Investments Act

Title III requires the disclosure, in solicitations by depository institutions and other entities, of basic information about yields and fees. Among other things, it requires the disclosure of the annual percentage yield, the period it will be in effect, any minimum account balance and time requirements, the minimum amount of the initial deposit, a statement that regular fees or other conditions could reduce the yield, and a statement that a penalty may be imposed for early withdrawal.

Title III also requires each depository institution to maintain a detailed schedule of fees, charges, yields, and other terms and conditions. Further, it requires each such institution to calculate interest on the principal balance in an interest-bearing account by using either the day of deposit to day of withdrawal or the average daily balance method. These two methods, which, according to the American Bankers Association's 1988 Retail Deposit Services Report, are used currently by approximately 90 percent of all depository institutions, produce very similar results for consumers. The effect of requiring their use is to preclude the use of all other methods, including the low balance method, which, by permitting interest to be based on the lowest balance in the account on any day during the accounting period, does not give the consumer a fair return. In addition, the title requires interest to be calculated on the full amount of the principal in the deposit account. This provision prohibits the use of investable balance method which, similarly to the low balance method, permits depository institutions to calculate interest on something other than the full amount on deposit.

Expedited Funds Availability Act

Congress enacted the Expedited Funds Availability Act in 1987 (the "Act"), 12 U.S.C. 4001 et seq., as part of the Competitive Equality Banking Act. The Act limits the holds which depository institutions may place on deposited funds by requiring that deposit-

ed funds be made available for withdrawal according to specified schedules. The Act also authorizes the Federal Reserve Board to improve the check processing system so that depository institutions would not bear undue risk in complying with the availability schedules. As implemented by Regulation CC, the Act established temporary schedules, which became effective on September 1, 1988, and permanent schedules, which will become effective on September 1, 1990.

The Expedited Funds Availability Act established availability schedules depending upon the type of deposit, usage of automated teller machines ("ATMs"), method of withdrawal, and applicability of temporary versus permanent schedules. The Act also requires that various specific disclosures be made to customers.

Several technical problems have arisen with the Act since its implementation due to the complexity of its structure and because several anticipated technological breakthroughs have failed to occur. This legislation makes four changes to the Act to address these problems.

Availability of cash and certain other deposits at depository institutions and proprietary ATMs.—The Act differentiates between deposits made at depository institutions staffed by employees and at proprietary ATMs, on the one hand, and deposits at nonproprietary ATMs, on the other. The first amendment to the Act relates to the rules governing the availability of cash and certain other deposits at staffed depository institutions and proprietary ATMs. It makes the rules governing availability of cash and other checks that receive next-day availability consistent with the rules for Treasury checks and checks drawn on the receiving depository institution ("on us" checks). All these items must be made available for withdrawal on the next business day after the business day of deposit, regardless of whether the deposits are made with tellers or at proprietary ATMs.

The current provisions of the Expedited Funds Availability Act explicitly provide that Treasury and "on us" check deposits must be given next-day availability when deposited at these places. The Federal Reserve Board had recommended allowing Treasury and "on us" checks deposited at proprietary ATMs second-day availability because of its concern that some ATMs are difficult to service on a daily basis. The witness for Consumers Union testified that the Federal Reserve Board had misinterpreted the statute in issuing regulations allowing cash deposits and local government and depository (cashier's, certified, teller's) checks to receive second-day availability if they are deposited at ATMs.

The legislation eliminates this different treatment between Treasury checks and cash; it requires both to be available on the next day with a limited exception. The Committee responded to the concern that some proprietary ATMs are located in remote areas by authorizing the Federal Reserve Board to allow an additional day for availability of deposits made at ATMs located in places which are difficult to service on a daily basis.

Nonproprietary ATM deposits.—The second amendment to the Act postpones until September 1, 1994 a scheduled change in the rules governing the availability of deposits at nonproprietary ATMs.

Nonproprietary ATMs are shared network ATMs, i.e., an ATM that is not owned/operated by the depository institution in which the customer has an account. Most nonproprietary ATMs do not accept deposits—they merely dispense cash—but some ATM networks do offer this service.

The Act currently allows all nonproprietary ATM deposits to be treated as if they were nonlocal checks until September 1, 1990; they must be made available no later than the seventh business day after deposit. No differentation is made among the types of checks deposited in nonproprietary ATM. They are all treated as if they were nonlocal checks, because processing limitations make it costly for nonproprietary ATMs to differentiate between deposits of local and nonlocal checks. After September 1, 1990, the Act currently provides that deposits at nonproprietary ATMs of next-day items and local checks must be made available on the second business day and deposits of nonlocal checks must be available on the fifth business day.

Under the amendment, these new rules will not go into effect and nonproprietary ATM deposits will continue to be given the same availability as nonlocal checks for four more years. The availability period for nonlocal checks will be reduced from seven days to five on September 1, 1990, and this amendment allows for five days availability for all nonproprietary ATM deposits as well.

The Act provided for equalizing the proprietary and nonproprietary ATM rules under the permanent schedule in anticipation that ATM technology would advance sufficiently by September 1, 1990, so that depository institutions could capture and verify deposit information from the two types of ATMs in the same amount of time. However, depository institutions and ATM network operators have indicated that the industry has not yet identified a viable cost-effective solution to nonproprietary ATM processing limitations. Although the capability does exist to provide information regarding the composition of deposits made at nonproprietary ATMs, the Federal Reserve Board testified that all identified solutions are costly and would likely result in increased fees for customers who make deposits at nonproprietary ATMs or elimination of the deposit-taking service. In addition, depository institutions and ATM operators testified that the potential for fraud will increase if institutions must give second-day availability to some deposits made at nonproprietary ATMs. Substantial increases in operating costs or fraud losses would lead many institutions to cease accepting deposits at nonproprietary ATMs, according to industry testimony.

The Committee anticipates that either computer technology or processing procedures will advance sufficiently within the next four years, so that shorter availability rules for nonproprietary ATM deposits will be both feasible and cost effective.

Safeguard exceptions for next-day checks and notice requirements.—The third amendment has two parts. The first part would expand the scope of most of the section 604 "safeguard" exception holds to include deposits of all "next-day" checks, such as government checks and depository checks. Currently, the exceptions for large or redeposited checks to accounts and repeated overdrafts in subsection 604(b) of the Act, the reasonable cause exception in subsection 604(c), and the emergency conditions exception in subsec-

tion 604(d) do not apply to some or all of the next-day checks covered in subsection 603(a)(2) of the Act.

According to the Federal Reserve Board, a large number of depository institutions have expressed concern that the inapplicability of these exceptions causes excessive exposure to risk from the return of checks that must be accorded next-day availability. In particular, depository institutions have noted the ease of forgery of government and depository checks. The Federal Reserve Board testified that it is aware of a number of cases of this type of check fraud and believes that fraud will increase as forgers become more familiar with the Act, Regulation CC, and check collection practices.

The second part of this amendment would grant the Federal Reserve Board some flexibility in tailoring the requirements for exception hold notices to the exception invoked. Under current law in subsection 604(f) of the Act, each time any exception to the schedules is invoked, the depository institution must notify the customer of the exception hold. According to the Federal Reserve Board, such individual notices may be appropriate in the case of the reasonable cause exception, which is invoked on a case-by-case basis, but they may not be appropriate for the large-dollar, redeposited check, or repeated overdraft exceptions. Accordingly, this amendment would allow the Federal Reserve to issue regulations so that accountholders repeatedly depositing large dollar amounts would receive a single notice rather than repeated notices. Also, for redeposited checks or repeatedly overdrawn accounts, a single notice could be provided at the time the exception was first invoked so long as the notice describes the special schedules applicable to the account and the time period for which they apply.

Loss allocation.—The final amendment is even more technical than the preceding three. This amendment would clarify the Federal Reserve Board's ability to allocate liability for losses in the check collection process among depository institutions as well as among other participants in the payments system, such as States and their political subdivisions. Other entities besides depository institutions are involved in the collection and payment of checks. Some States and political subdivisions issue warrants drawn directly on themselves. These warrants are often used to pay employees, vendors, pensioners, and those receiving public assistance. In addition, other nonbank payors, such as insurance companies, draw checks directly on themselves.

Under the Eleventh Amendment to the Constitution, suits against State governments are barred in Federal court unless Congress subjects the States to Federal jurisdiction in unequivocal statutory language. See *Atascadero State Hospital* v. *Scanlon,* 473 U.S. 234 (1985). The current language of subsection 611(f) of the Act does not clearly authorize the Federal Reserve Board to allocate liability for losses, such as those resulting from the mishandling of a returned check, among entities such as States or their political subdivisions or other nonbank payors. This amendment would eliminate this ambiguity by allowing the Federal Reserve Board to impose on, or to allocate, among such entities the risk of loss and liability in connection with any aspect of the payments system, including

the payment of checks. Liability under these provisions could then be enforced in the appropriate courts.

The amount of liability in cases against States or their subdivisions would be limited to the damages provided for in this subsection. The amendment would not allow against States or their subdivisions punitive damages or the special class action awards that may be had against depository institutions under subsections 611(a) and (b) of the Act.

Proposed amendment regarding local checks.—At the markup the Committee narrowly rejected an amendment offered by Senator Garn which would have changed the permanent availability schedule for local checks from two days to three days. The temporary schedule required that funds for local checks be made available three days following their day of deposit, but the permanent schedule shortened this to two days starting September 1, 1990.

The Federal Reserve recommended adoption of this amendment in a letter sent to the Members of the Committee shortly before the markup, although its testimony at the March Subcommittee oversight hearing only referred to this idea in passing. The Committee rejected the amendment both for this procedural reason and because the Federal Reserve had failed to show that fraud losses would increase without the amendment.

The Federal Reserve did not provide any statistics on fraud losses caused by the Act. At the same time, in its letter to the Committee, the Federal Reserve indicated that about 75% of banks are providing same-day or next-day availability, which is shorter than that required under both the temporary and permanent availability schedules. Under the permanent schedule, while depository institutions would not have bad checks returned before they would be required to provide limited cash withdrawals, they would still have a third day to process withdrawals made by check, which constitute the vast majority of all withdrawals.

Further, all depository institutions still are able to apply "exception" holds for large dollar checks and checks they have reason to believe are uncollectible. Finally, the Federal Reserve has statutory authority to suspend the schedules if depository institutions experience unacceptable levels of losses.

Home equity consumer loan protection

Title III makes one amendment to the Home Equity Loan Consumer Protection Act of 1988 to require lenders to disclose the margin that applies to the plan or plans being offered. The margin is the number of points of interest that are added to the interest rate index to determine the interest rate the borrower must pay on a variable rate home equity loan.

The 1988 law was designed to give consumers timely notice of the key provisions of home equity loans and to protect them from one-sided terms that favor lenders. Among the key terms required to be disclosed by the legislation were the index and margin to which changes in the interest charge were pegged. For example, if a consumer's loan is tied to the Wall Street prime rate plus a two point margin, the consumer needs to know both the index and the margin in order to determine what he or she will be paying. Thus,

the Act required the disclosure of "any index or margin to which such changes in the rate and related" for variable rate products.

When the Federal Reserve Board adopted its final rule implementing the Act on June 9, 1989, it excluded disclosure of the specific margin applicable to a loan. Consumers Union challenged the Federl Reserve Board's rule on this and several other matters. On May 2, 1990, in *Consumer Union* v. *Federal Reserve Board,* 736 F. Supp. 337 (D.D.C. 1990), the Court, among other things, ruled that:

> A literal reading of the statute does not support the plaintiff's position; the literal language of the statute provides that lenders must disclose "a description of the manner in which changes" in the interest rate will be made, including "any index or margin to which such changes in the rate are related." * * * In the normal case, the change in the interest rate of a variable HEL [home equity loan] is not related to the margin but to the index; the margin is generally a fixed figure which will not be responsible for a change in the interest rate. Accordingly, the lenders would only be required to describe how the interest rate would change over time due to the index.

This interpretation eliminated the requirement to disclose the margin, thereby leaving the consumer without one of the key terms necessary to determine what he or she will be paying for the loan. The provision adopted by the Committee is designed to rectify this problem. The Committee's action should not be interpreted to represent a judgment on the other issues that remain in litigation between Consumers Union and the Federal Reserve Board.

TITLE IV. COUNTERFEIT DETERRENCE

History of the legislation

In 1978, the United States Treasury Department joined the Advance Counterfeit Deterrence Program begun by a Committee comprised of the United States, the United Kingdom, Canada, and Australia. The Committee's objective was to identify threats to currency integrity, discuss various approaches to deterrence, and protect their countries' currency from counterfeiting.

The Secretary of the Treasury established an internal Interagency Steering Committee on Advanced Counterfeit Deterrence, chaired by the Treasury of the United States and comprised of representatives from the U.S. Secret Service, Bureau of Engraving and Printing, and the Federal Reserve Board. Its mission is to examine the threat to currency integrity, develop methods to address it, and advise the Secretary on currency redesign approaches. The Steering Committee commissioned a study to examine the counterfeiting threat on the continued viability of United States currency. The conclusions were: (1) the year 1987 would be a "threshold" year for increased counterfeiting due to the increasing availability of color copiers and other computer technology; and (2) the incorporation of deterrence features in currency could have a significant effect in reducing the level of counterfeiting by both professionals and amateurs.

The Treasury Department drafted language to strengthen Title 18 of the United States Code, dealing with anticounterfeiting which was introduced on May 1, 1986, by Senator Garn, at the request of the Administration, as S. 2393. The language of S. 2393, was added to S. 1092, a bill to authorize appropriations for the United States Mint for fiscal years 1986 and 1987. S. 1092, with the amendment, passed the Senate by voice vote on August 15, 1986. The House of Representatives did not accept this amendment.

Since the early 1980's, the Treasury Department has been briefing members of Congress on plans to introduce deterrents to counterfeiting United States Federal Reserve notes. In 1985, the Treasury Department announced its readiness to produce Federal Reserve notes with micro-printing circling the portraits on the notes and mylar strip embedded in the paper that could be seen when held up to light. To date, these modifications to Federal Reserve notes have been implemented.

On June 18, 1990, Senator Riegle and Senator Garn introduced, at the request of the Administration, S. 2748, a bill to authorize the Secretary of the Treasury to adopt distinctive counterfeit deterrents. A hearing was held on July 13, 1990, at which Senator Riegle and Garm purposed substitute language to S. 2748 which addressed concerns of businesses and individuals affected by provisions in the legislation dealing with computer technology. The witnesses at that hearing were: Carl D'Alessandro, Assistant Director for Operations of the Bureau of Engraving and Printing; William Ebert, Special Agent in Charge, Counterfeit Division, United States Secret Service; and Kenneth Wasch, Executive Director of the Software Publishers' Association.

On July 22, 1990, at the Committee mark-up, Senator Riegle's substitute language on anticounterfeiting was adopted as Title IV of the Committee Print of the Money Laundering Enforcement Amendments Act of 1990.

Discussion

As noted in the preceding section, counterfeit deterrent measures have been studied and tested for over twelve years. As late as November 1986, the Treasury Department announced that new anticounterfeiting devices would be introduced in Federal Reserve Notes in 1987. Those deterrents included micro-engraving around the portraits on the obverse of the bills, and a mylar strip embedded in the paper. Because of various technical difficulties, the introduction date has been delayed until 1991.

Beginning about 1984, color copiers entered the commercial marketplace. This improved reproduction technology which made possible "casual" counterfeiting, *i.e.*, producing a counterfeit bill using a color copier by an amateur. The Secret Service was concerned that, with increasing sales and availability of color copiers, laser printers, and optical scanning equipment over the next decade, major problems could occur. Not only would "casual" counterfeiting increase significantly, but professional counterfeiters would be able to counterfeit Federal Reserve notes and Treasury checks with greater ease and less obvious means. Thus, legislation was introduced at the request of the Administration in 1986 to strengthen those provisions of title 18 of the United States Code, that address

counterfeiting. It included language that clarified that counterfeiting included the use of electronic techniques such as optical scanning.

The 1986 legislation also conformed section 504 of title 18 with the holding of the Supreme Court in *Regan* v. *Time, Inc.*, 468 U.S. 641 (1984). Section 474 of title 18, U.S.C., makes it a crime to photograph any obligation or other security of the United States. But, section 504(1) of title 18 permits the printing or publishing of illustrations of any such obligation or other security "for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers or albums" if the illustrations are in black and white, either less that three-fourths or more than one and one-half the size of the original, and if the negative and plates used in making the illustrations are destroyed after their final authorized use.

Time, Inc. brought an action against the Federal government after being warned that it was violating sections 474 and 504 of title 18 by publishing a photographic color reproduction of United States currency on the cover of one of its magazines. Time sought a declaratory judgment that the statutes were unconstitutional on their face and as applied to Time, and an injunction preventing their enforcement. The District Court, ruling in Time's favor, held that the statutes violated the First Amendment.

Upon appeal, the Supreme Court affirmed in part and reversed in part the lower court judgment. The Supreme Court first determined that Time, Inc.'s use of the illustrations was speech protected by the First Amendment. Focusing on the requirements that the illustration appear in an article, book, journal, newspaper, or album and that it be used for philatelic, numismatic, education, historical or newsworthy purposes, the Court held that section 504 could not be sustained as a valid time, place, and manner regulation because it required the government to make distinctions based on content or subject matter. For example, under section 504, one reproduction would be allowed and another not because the government determines that the message in one is newsworthy but the message in the other is not. The Court also determined that the purpose and publication restrictions were unconstitutionally vague.

The Court held that section 504's size and color requirements are valid as reasonable manner regulations that can constitutionally be imposed on those wishing to publish photographic reproductions of currency. Compliance with those requirements does not prevent the party from expressing any view on any subject or from using illustrations of currency in expressing these views. Moreover, the government does not need to evaluate the nature of the message imparted in order to enforce the requirements since they restrict only the manner in which the illustrations can be presented. Such requirements also effectively serve the government's compelling interest in preventing counterfeiting. Consequently, the color and size limitations are reasonable manner regulations that constitutionally can be imposed on those wishing to publish photographic reproductions of currency. Because the provisions of section 474 are of real concern only when the limitations of section 504 are not complied with, section 474 is also constitutional.

One of the main purposes of section 504 was to relieve the Treasury Department of the burden of processing numerous requests for special permission to use photographic reproductions of currency. Thus, if the size and color limitations are constitutional, Congress' intent can in large measure be fulfilled without the purpose requirement. The size and color limitations also meet the requirements in that they effectively serve the government's compelling interest in preventing counterfeiting.

S. 2748, the anti-counterfeiting legislation introduced by request on June 18, 1990, sought to define new distinctive counterfeit deterrents (e.g., watermarks, seals, and security threads); to criminalize the unauthorized possession of distinctive counterfeit deterrents adopted by the Secretary, as well as the possession of features and devices similar in form to such deterrents; to amend chapter 25 of title 18, U.S.C., to clarify that counterfeiting includes the use of electronic techniques such as electro-optical scanning; to amend section 504 of title 18, U.S.C., to provide that laser-generated computer images of U.S. currency and securities are not permissible reproductions; to make it illegal to retain on disk computerized images of U.S. currency and obligations; and to conform that section with the Supreme Court decision discussed above.

Since the Administration-proposed legislation was not new, concerns had been expressed regarding language that criminalized the retention of computerized images of Federal Reserve notes. Numerous businesses—ranging from software companies to numismatic publishers to hobbyists—would be adversely affected. Concern was also expressed over the wording: "criminalize the unauthorized possession of * * * features and devices similar in form to such deterrents adopted by the Secretary." Thus, the Committee worked with the Treasury Department and the Secret Service to address these concerns, while providing the Secretary of the Treasury with the needed authority to address criminal use of emerging technology for counterfeiting.

At the hearing held on July 13, 1990, Chairman Riegle agreed that technological advances pose serious problems for counterfeiting deterrence. However, Chairman Riegle also expressed his awareness of the needs of legitimate business and personal use of such technologies: "[w]e must balance the needs of the government on the one hand while protecting the rights of law-abiding citizens on the other, because the threat of using sophisticated computers and color copiers to counterfeit is a real threat." Chairman Riegle emphasized that the compromise language he and Senator Garn proposed addressed Treasury's needs while protecting the rights of law-abiding citizens and businesses.

At the same hearing, Mr. D'Alessandro, Assistant Director for Operations of the Bureau of Engraving and Printing, testified that he had no objection to the proposed substitute language to S. 2748. Mr. Ebert, testifying for the Secret Service, indicated that in 1989 the Secret Service suppressed 92 counterfeit plant operations in the United States. Of that total, 21 of the plants produced counterfeit notes on office machine copiers. The Secret Service also has seen several counterfeits recently produced by computer laser scanning technology. Mr. Kenneth Wasch, of the Software Publishers's Association, also testified in support of the substitute language.

Finally, the legislation provides increased criminal penalties for possession of new deterrents that might be adopted and increased criminal penalties for counterfeiting activities.

TITLE V. COIN REDESIGN

History of the legislation

Title V was first introduced in the 100th Congress on October 8, 1987, as S. 1776 by Senator William Armstrong. A hearing on S. 1776 was held by the Committee on April 22, 1988. Primary reasons given at that hearing for supporting this legislation were: (1) the current designs do not adequately represent America's values and ideals today; and (2) revenues generated from implementing this program would accrue to the Federal government in the amount of $2 to $3 billion. After a Committee markup, during which S. 1776 was amended, the bill passed the Senate on June 23, 1988.

In the 101st Congress, Senator Malcolm Wallop introduced the same language as S. 428. The bill was discharged from the Committee on June 23, 1989 by Unanimous Consent and passed the Senate by voice vote on June 23, 1989. On July 17, 1990, the coin redesign legislation was added as Title V of the Committee Print of the Money Laundering Enforcement Amendments Act of 1990. The language contained in S. 428 previously had been added to S. 2388, the Yosemite National Park Centennial Medal Act, and to S. 566, the National Affordable Housing Act of 1990.

Discussion

The Committee held a hearing on the issue of redesigning America's circulating coins on April 22, 1988. Elvira Clain-Stefanelli, Executive Director of the National Numismatic Collection at the Smithsonian Institution, summed up the essence of the purpose of the coin redesign legislation: "It is my personal conviction that our coinage could only gain if it were to express our notions of liberty, progress, freedom, and democracy in a way which could find an echo in the hearts of our own generation. And since any coinage is the emblem of its country, this new coinage should stand for the entire world as an inspiring testimony of our accomplishments and of our goals as a nation today."

Although the Secretary of the Treasury has the discretionary authority to propose design changes once a design has been on either side of a coin for twenty-five years, the Treasury Department has not exercised this authority. Donna Pope, Director of the United States Mint, testified that the Treasury Department did not find legislation objectionable. Ms. Pope testified on the process of designing new coins, from the production of coin dies to trial strikes, to providing an adequate inventory for general release. Treasury expressed its view that the coin redesign program could be accomplished in the mandated six years.

Each of the six design changes is expected to cost approximately $125,000 (1988 dollars) for engraving and production testing. In addition, an estimated $7.1 million (1988 dollars) would be required to produce the additional coins needed over the six-year phase-in

period. A public education campaign was suggested. This would necessitate adding these expenses to the United States Mint's budget.

In responding to the issue of the amount of revenue generated, Ms. Pope testified that certain revenues would accrue as a result of design changes, derived from predicted increases in the sale of numismatic sets and from predicted increased seigniorage. Seigniorage is the term used for the difference between the face value of the coin and its production costs, and is often called the "profit" from coin production. Based on analyses of past demand patterns, the United States Mint estimated that $224 million in additional seigniorage receipts would be generated in the first 6 years of the new designs.

Seigniorage does not reduce the budget deficit; because it is not an on-budget receipt and does not directly offset expenditures. As an off-budget miscellaneous receipt, it is subtracted from the amount of the annual deficit to determine how much money must be borrowed from the capital markets. The Treasury's Comptroller had estimated that for every $100 million of seigniorage generated during 1987, $5.9 million in interest costs were saved. Consequently, the estimated $224 million in additional seigniorage that would have been raised by design changes as Ms. Pope testified in 1988 would reduce budget outlays by approximately $2.2 million per year.

An additional $3 million per year over the six year period ($18 million total) could be realized in sales of uncirculated and proof sets of coins containing the newly redesigned coins. This increase in demand for new sets was established at approximately 500,000. While the language in the coin redesign legislation earmarks these funds for debt reduction, section 5132(a)(1) of title 31, United States Code, already requires these funds to be deposited into the general fund of the Treasury to reduce the national debt.

During the mark-up of the legislation, Senator Sarbanes raised the issue of whether section 3 of S. 1776 had the effect of locking in the Presidential portraits in perpetuity. Under current law, section 5112(d)(2) of title 31, United States Code, the Secretary of the Treasury has the discretionary authority to change designs on either side of a coin once it has been on that coin for a period of twenty-five years. During Senate floor action Senator Cranston, in a colloquy with Senator Sarbanes re-affirmed that the Secretary of the Treasury continues to have that discretion. The coin redesign legislation is not intended to take that discretionary authority away from the Secretary.

Section-by-Section Analysis

TITLE I. TERMINATION OF CHARTERS AND INSURANCE

Section 101—Revocation of charter of Federal depository institutions convicted of money laundering or cash transaction reporting offense

Section 101 contains three parallel provisions: subsection (a) applies to National banks, subsection (b) to Federal savings associations, and subsection (c) to Federal credit unions. Each subsection amends the relevant statutes to provide for the following changes.

If a covered institution is convicted of money laundering—engaging in a monetary transaction involving money or property known to be derived from criminal activity (18 U.S.C. 1956, 18 U.S.C. 1957)—the Attorney General must notify the appropriate regulator (the Comptroller of the Currency, the Office of Thrift Supervision ("OTS") or the National Credit Union Association ("NCUA")) of the conviction. After receiving that notice, the regulator must issue a notice of intention to terminate the charter to the institution and schedule a pretermination hearing.

If a covered institution is convicted of a criminal conviction under chapter 53 of title 31 U.S.C. (records and reports on monetary instruments transactions and structuring violations), the Attorney General must notify the appropriate regulator of the conviction. The regulator may issue a notice to terminate the charter to the institution and schedule a pretermination hearing.

In either case, the regulator has discretion to revoke the institution's charter after considering certain factors: (a) the extent of senior management's knowledge of, or involvement in, soliciting drug money or the money laundering violation; (b) the extent to which interests of the local community in adequate depository and credit services would be threatened; (c) bank cooperation with law enforcement; (d) significant losses to the Federal insurance funds or the RTC; and (e) the extent to which the institution's program of money laundering deterrence and compliance clearly exceeded federally required deterrence and compliance measures.

The successor to the interests of an institution that has been convicted of a money laundering or reporting requirement offense is not subject to the charter revocation section if the successor acquired the interest in good faith and not as a means of evading the section.

The legislation defines "senior management officials" as officials who have major supervisory control within the institution, (including members of the board of directors and, where applicable stockholders with 10% or more voting stock in the institution) or within any branch of a foreign institution located in the United States. The regulators must specify by regulation which officials of depository institutions will be treated as senior management officials for purposes of this section.

Section 102—Termination of insurance of State depository institutions convicted of money laundering or cash transaction reporting offenses

Section 102 contains two parallel provisions: subsection (a) applies to Federally insured State depository institutions, State banks and savings associations, and subsection (b) applies to Federally insured State credit unions. Each subsection amends relevant statutes to provide for the following changes.

If a covered institution is convicted of money laundering (18 U.S.C. 1956, 18 U.S.C. 1957), the Attorney General must notify the Board of Directors of the FDIC (for State banks and savings associations) or the NCUA (for state credit unions). After receiving the notice, the FDIC or the NCUA, as appropriate, must issue a notice to the institution and the appropriate state supervisory agency of

its intention to terminate insurance, and schedule a pretermination hearing.

If a covered institution is convicted of a crime under chapter 53 of title 31 U.S.C. (records and reports on monetary instruments transactions and structuring violations), the Attorney General must notify the appropriate insurer of the conviction. The insurer may schedule a pretermination hearing. If so, the regulator must issue a notice to the institution and the appropriate state supervisory agency of the intention to terminate insurance.

In either case, the insurer has discretion to terminate the institution's insured status after considering the same factors required by Section 101. If the insurer issues an order to terminate the institution's insured status, the FDIC or NCUA must notify the State banking supervisor (and the OTS for State savings associations, where appropriate) at least 10 days before the effective date, and publish a notice. Deposits in the institution at the time of the termination remain insured for six months to two years, at the insurer's discretion.

The successor to the interests of an institution that has been convicted of a money laundering or reporting requirement offense is not subject to the termination section if the successor acquired the interest in good faith and not as a means of evading the section.

The legislation defines "senior management officials" as officials who have major supervisory control within the institution, (including members of the board of directors and, where applicable, stockholders with 10% or more voting stock in the institution) or within any branch of a foreign institution located in the United States. The insurers must specify by regulation which officials of Federally insured institutions will be treated as senior management officials for purposes of this section.

Section 103—Removal of parties involved in currency reporting violations

Section 103 contains parallel provisions: subsection (a) applies to FDIC insured institutions, and subsection (b) applies to credit unions. Each subsection amends relevant statutes to provide for the following changes.

When the appropriate Federal banking agency determines that (a) an institution affiliated party willfully violated any provision of chapter 53 of title 31 U.S.C. (records and reports on monetary instruments transactions and structuring violations), and the violation was not inadvertent or unintentional, or (b) an officer or director of an insured depository institution knew an institution affiliated party violated the money laundering provisions (18 U.S.C. 1956, or 18 U.S.C. 1957) or reporting requirements (31 U.S.C. 5322), that agency may remove that party, officer or director from office. With respect to an officer or director who knew of another party's violation, the agency shall consider whether the officer or director took appropriate steps to stop or prevent reoccurrence of the violation.

If the institution affiliated party is charged with a crime involving money laundering (provisions of 18 U.S.C. 1956, or 18 U.S.C. 1957), or a violation of the reporting requirements (31 U.S.C. 5322),

the appropriate federal banking agency *may* suspend the party or prohibit further involvement with the institution.

If the party is convicted, the agency must issue an order to remove that party from office or prohibit further participation in the affairs of the institution.

Section 104—Unauthorized participation

Section 104 provides that when a party is convicted of money laundering, he or she is automatically barred from participation in the industry unless he or she has the written consent of the FDIC.

Section 105—Access by State supervisors to transaction reports

Section 105 allows Federal agencies to share information contained in reports filed under the Bank Secrecy Act with State supervisory agencies. The information may be used only for State supervisory purposes.

TITLE II. MONEY LAUNDERING ENFORCEMENT

Section 201—Identification of financial institutions

Section 201 requires depository institutions to identify "financial institutions" (defined in section 5312 to include unregistered brokers and dealers, currency changers, check cashers, money transmitters and others) that hold accounts with the depository institution, and to report information about such customers as required by the Secretary of the Treasury. It also provides for a civil penalty for willful violation of the section.

Section 202—Prohibition of illegal money transmitting businesses

Section 202 makes conducting an illegal money transmitting business a Federal felony. An "illegal money transmitting business" is defined as a money transmitting business that affects interstate or foreign commerce and is knowingly operating in a State without a state license, where such operation is punishable under state law as a misdemeanor or a felony. "Money transmitting" means transferring funds on behalf of the public. Section 202 makes illegal money transmitting punishable by fines and/or imprisonment up to five years. Property used in conjunction with that illegal operation is subject to seizure and forfeiture.

Section 203—Compliance procedures

Section 203 gives the Secretary of the Treasury authority to issue new regulations to guard against money laundering. This section anticipates "know-your-customer" regulations.

Section 204—Nondisclosure

Under current law, the Treasury Department can issue an order to a financial institution in a particular geographical area that requires currency transaction reports for transactions under $10,000. (Normally, reports are required for currency transactions over $10,000). Section 204 prohibits the institution from disclosing the existence or terms of that order.

Section 205—Provisions relating to recordkeeping with respect to certain international wire and other funds transfers

Under Section 205, the Secretary of the Treasury must issue final regulations, before January 1, 1991, to require depository institutions, money transmitters, check cashers, businesses that issue or redeem money orders, traveler's checks and others to keep records of international wire and other funds transfers, and submit them to the Treasury Department on request.

Section 206—Right to Financial Privacy Act amendment

Section 206 amends a provision that permits a government agency to transfer a financial institution's customer records to the Attorney General without notice to the customer. As amended, the provision would allow a government agency to transfer the customer's financial records to the money laundering investigations divisions within the Treasury Department for criminal and investigative purposes. The transferring agency must certify in writing that the records may be relevant to a violation of Federal criminal law, and when the investigation or prosecution is complete, the records must be returned to the transferring agency.

Section 207—Treasury Department study of altering U.S. currency

Section 207 directs the Treasury Department, in consultation with the Justice Department and the Drug Enforcement Administration to analyze and report to the Committee on proposals to change the size, denomination or color of U.S. currency and on the proposal to require U.S. currency circulating outside the United States to be a different color than currency circulating in the United States. The report must be submitted within niney days after enactment.

Section 208—Justice Department study of prosecutorial guidelines

Section 208 requires the Attorney General, after obtaining views from the agencies and the public, to determine whether compliance with the money laundering and reporting statutes would be enhanced and reporting by financial institutions of suspicious activities would be encouraged by the issuance of prosecutorial guidelines which would list factors to be considered when determining whether to pursue prosecutions against financial institutions. The report must be submitted to the Committee six months after the date of enactment.

TITLE III. TRUTH IN SAVINGS

Section 301—Short title

Section 301 designates this title as the "Truth in Savings and Investments Act," and sets forth the table of contents.

Section 302—Findings and purpose

Section 302 finds that the ability of consumers to make informed decisions among savings and investment options would be enhanced and competition among depository institutions and investment companies would be increased if there were uniformity in the calculation and disclosure of the yields and the basic terms and

conditions of savings accounts and investment accounts. It is the purpose of this title to require the standardization of the method of calculating yields and the clear and uniform disclosure of the key terms of such accounts and investments so consumers may make meaningful comparisons among the competing claims of depository institutions and investment companies.

Section 303—Definitions

Section 303 provides definitions of the terms account, annual percentage yield, Board, depository institution, interest and multiple rate account.

Section 304—Disclosure of yields and terms of accounts

In general.—This subsection provides that depository institutions and other entities may only disclose the annual percentage yield and not any other specific rate of interest in any advertisement, announcement, or solicitation. The purpose of the provision is to ensure that depository institutions disclose only one standardized figure so that consumers will know that the higher advertised figure will always produce the greater return for them. This provision will eliminate the present confusion that results from the advertising of interest figures based on different forms of calculation.

Information required to be disclosed if annual percentage yield is used.—This subsection provides for the disclosure of the most significant terms and conditions in any advertisement, announcement or solicitation which includes a reference to a specific annual percentage yield. Among the terms that would have to be disclosed are the following, to the extent applicable: the period such yield is in effect, all minimum account balance and time requirements which must be met to earn the yield, the minimum amount of any required initial deposit, a statement that regular fees or other conditions could reduce the yield, and a statement that a penalty shall be imposed for early withdrawal.

Broadcast and electronic media and outdoor advertising exception.—This subsection provides for more limited disclosures in the case of broadcast and electronic media and certain other advertising where the Board finds that certain disclosures would be unnecessarily burdensome.

Misleading or inaccurate advertisements, etc., prohibited.—This subsection prohibits depository institutions and other entities from making any advertisement, announcement, or solicitation relating to any deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.

Section 305—Account schedule

In general.—This subsection requires each depository institution to maintain a schedule of fees, charges, yields, and terms and conditions applicable to each class of accounts offered by the depository institution. The schedule for each class may be in the form of separate schedules or one comprehensive document.

Information on fees and charges.—The schedule required under subsection (a) with respect to any account shall contain the following information: a description of all fees, periodic service charges, and penalties which may be charged or assessed against the ac-

count or account holder, the amount of such fees, charges, or penalties (or the method by which such amounts will be calculated), and the conditions under which such amounts will be assessed; all minimum balance requirements that affect fees, charges and penalties, including a clear description of how each such minimum balance is calculated; and any minimum amount required with respect to the initial deposit in order to open an account.

Information on yields.—The schedule shall also include the following information:

(1) any annual percentage yield;

(2) the period during which any such yield will be in effect;

(3) any annual rate of simple interest;

(4) the frequency with which the interest will be compounded and credited;

(5) any minimum balance which must be maintained to earn the stated rates and yields and a clear description of how the minimum balance is calculated;

(6) a description of any minimum time requirement that is necessary to obtain the disclosed yields;

(7) a statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of withdrawal from, or the closing of, the account will not be paid by the depository institution nor credited to the account by reason of such withdrawal or closing; and

(8) any provisions relating to the nonpayment of interest, including any charge or penalty for early withdrawal.

Other information.—The schedule shall include any such other disclosures as the Board may determine to be necessary to allow consumers to understand and compare accounts.

Section 306—Disclosure requirements for certain accounts

Section 306 provides the Board with the authority to prescribe modifications in the disclosure requirements for accounts with respect to which determination of the annual percentage yield is based on an annual rate of interest that is guaranteed for less than one year, variable rate accounts, accounts which do not guarantee payment of a stated rate (credit union accounts), and multiple rate accounts.

Section 307—Distribution of schedules

In general.—This subsection provides that a copy of the schedule shall be mailed to existing account holders, made available to any person upon request, and provided to any potential customer before an account is opened or a service rendered, within six months after publication of final Board regulations. The schedule may be included in any regularly scheduled mailing sent out during the six month period.

Distribution in case of certain initial deposits.—If a depositor is not physically present at the depository institution when the initial deposit is accepted, and the schedule has not been furnished previously to such depositor, the institution shall mail the schedule to the depositor not later than 10 days after the initial deposit.

Distribution of notice of certain changes.—This subsection requires depository institutions to provides information to all its ac-

count holders when there is a change in any term or condition required to be disclosed under section 305(a) that may reduce the yield or adversely affect the account holder. This information shall be mailed to account holders at least 30 days before the change takes effect.

Distribution in case of accounts established by more than one individual or by a group.—If an account is established by more than one individual or for a person other than the individual, distribution requirements are met if distribution is made to one of the persons who opened the account, or to an individual representative of the person on whose behalf such account was established.

Section 308—Periodic statements

Section 308 requires depository institutions to provide each account holder, on or with each periodic statement, clear and conspicuous disclosures of the annual percentage yield, the amount of interest earned, and any fees or charge imposed. This information will enable account holders to understand what is happening with their account on a periodic basis. It does not, however, require depository institutions to provide periodic statements if they are not presently providing them.

Section 309—Payment of interest

Determination of balance on which interest is paid.—This subsection requires depository institutions to calculate interest on the principal balance in an interest-bearing account by using either the average daily balance method or the day of deposit to day of withdrawal method, as defined by the Board. These two methods are permitted because they produce highly similar, if not identical, results in the vast majority of cases. It is important for interest to be calculated on nearly identical balances so that consumers can determine which account will produce the best return for them. This subsection will prohibit the use of all other methods, including the low balance method, which produces far lower yields than the other two balance calculation methods for the same stated annual percentage yield.

Date by which interest must accrue.—This subsection will ensure that depository institution accounts subject to this title begin to credit interest no later than the time the institution receives provisional credit for the deposit, which typically is within one to two days of the date of deposit.

Special rule for credit unions.—Subsection (a) does not apply to credit unions that calculate the accrual of interest or dividends by a method other than the method described in subsection (a) with respect to all funds, including cash, deposited in such accounts, and provide notice of their interest payment policy to their account holders.

Calculated on full amount of principal.—This subsection requires that the amount of interest accruing on an interest bearing account shall be calculated on the full amount of the principal in the account for the stated calculation period at the stated rates. The subsection is intended to prohibit use of the "investable balance" method whereby institutions pay interest on less than the full amount of the deposit.

No particular method of compounding interest required.—This subsection states that the bill should not be construed as prohibiting or requiring the use of any particular method of compounding or crediting interest, other than the restriction on when interest must accrue under subsection (b).

Section 310—Regulations

In general.—This subsection requires the Board to prescribe regulations to carry out the provisions of this title. The regulations may contain any exceptions for any class of accounts which the Board determines to be necessary or proper to carry out the purposes of this title, to prevent circumvention or evasion of the requirements of this title, or to facilitate compliance with the requirements of this title. It is not intended to permit the Board to override the specific provisions of any section of the title.

Model forms and clauses.—This subsection requires the Board to publish model forms for disclosure to facilitate compliance with this title. A depository institution that uses the model forms properly would be deemed to be in compliance.

Section 311—Administrative enforcement

This section provides for administrative enforcement by the relevant depository institution regulators.

Section 312—Civil liability

Section 312 sets forth a penalty structure based on the Truth in Lending Act, with some minor modifications. In the case of an individual action by an account holder, any entity that fails to comply with any requirement imposed under this title or with any regulation shall be liable to an account holder for not less than $100 nor more than $1,000, in addition to actual damages. In the case of a class action, the total recovery shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved. Additionally, in any successful action, the court can provide for the payment of the costs of the action together with a reasonable attorney's fee.

Section 313—Credit unions

In general.—This subsection exempts credit unions from direct application of the regulations prescribed by the Board under this title.

Regulations prescribed by the NCUA.—This subsection states that the National Credit Union Administration Board shall promulgate a regulation "substantially similar" to that which the Federal Reserve Board prescribes within ninety days of the effective date of the Board's regulation. The regulation shall take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. The subsection is intended to give the NCUA the necessary discretion to accommodate the unique structure of credit unions, so long as the regulations are substantially similar to those prescribed by the Board.

Section 314—Review of disclosure requirements for open-end management investment companies

This section requires the SEC to consult with the Board in order to review the regulations prescribed under this title and the Securities Act of 1933 and the Investment Company Act of 1940 to determine if such regulations are providing consumers with the ability to compare effectively savings and investment options.

Section 315—Effect on State law

The provisions of this title do not supersede any State laws relating to the disclosure of yields payable or terms for accounts to the extent such State laws require the disclosure of such yields or terms for accounts, except the the extent those laws are inconsistent with the provisions of this title. A similar rule applies with respect to State laws relating to the determination of the balance on which interest is calculated.

Section 316—Effective date of regulations

Section 316 requires the Board to issue regulations in final form within nine months after the date of enactment of this title. The regulations shall take effect not later than six months after publication in final form.

Section 317—Expedited Funds Availability Act amendments

Availability of cash and other next-day deposits.—Subsection (a) amends section 603(a) of the Expedited Funds Availability Act (dealing with next business day availability for certain deposits) to require that (1) cash, (2) state and local government checks, and (3) cashier's, certified, teller's, and depository checks must be made available for withdrawal on the next business day after the business day of deposit, regardless of whether the deposits were made with tellers or at (proprietary) automated teller machines ("ATMs").

In shortening the availability rules for cash and certain checks deposited at ATMs, the Committee recognizes that some ATMs are located in remote areas which are difficult to service on a daily basis. In order to avoid discoraging depository institutions from establishing remote ATMs, this subsection authorizes the Federal Reserve Board to allow an extra day in making available funds deposited at those ATMs which are difficult to service on a daily basis. Deposits made at ATMs on the premises of a depository institution would be expected to be made available for withdrawal under the general next-day rule.

Nonproprietary ATM deposits.—Subsection (b) amends section 603(e) of the Expedited Funds Availability Act, dealing with deposits at nonproprietary ATMs. The subsection postpones until September 1, 1994 the effective date of the permanent rules for deposits at nonproprietary ATMs. This subsection also reduces the availability period for funds deposited at nonproprietary ATMs from seven to five days so that deposits at nonproprietary ATMs will have the same availability as nonlocal checks (deposited with tellers or proprietary ATMs) under the permanent schedule.

Safeguard exceptions for next-day checks and notice requirements.—Subsection (c) amends section 604 of the Expedited Funds Availability Act, first, by expanding the scope of the "safeguard" exception holds to include deposits of all "next-day" checks, such as government checks and depository checks. This subsection makes (1) the large or redeposited checks exception and the repeated overdrafts exception provided for in subsection 604(b), (2) the reasonable cause exception provided in the subsection 604(c), and (3) the emergency conditions exception provided for in subsection 604(d) apply to next-day checks covered in subsection 603(a)(2).

Second, this subsection grants the Federal Reserve Board some flexibility in tailoring the requirements for exception hold notices to the exception invoked. This subsection allows the Federal Reserve Board to issue regulations so that accountholders repeatedly depositing large dollar amounts or redepositing checks would receive a single notice rather than notices at the time of each deposit. Also, for repeatedly overdrawn accounts, a singl notice could be provided at the time the exception was first involed so long as the notice describes the special schedues applicable to the account and the time period for which they apply.

Loss allocation.—Subsection (d) amends section 611(f) of the Expedited Funds Availability Act by clarifying that the Federal Reserve Board's ability to allocate liability for losses in the check collection process among depository institutions as well as among other participants in the payments system, such as states and their political subdivisions.

This section eliminates the ambiguity in current law by allowing the Federal Reserve Board to impose on, or allocate among, such entities the risks of loss and liability in connection with any aspect of the payments system, including the payment of checks. Liability under these provisions could then be enforced in the appropriate courts.

The amount of liability in cases against states or their subdivisions is limited to the damages provided for in this subsection. The section does not allow against States or their subdivisions punitive damages or the special class action awards that may be awarded against depository institutions under subsections 611(a) and (b).

Section 318—Home Equity Consumer Protection Act amendment

Section 318 requires the creditor to provide as part of the disclosures given with an application form the specific margin that applies to the creditor's home equity plan. This amendment permits creditors to offer multiple margins, for example, by tying the amount of the margin to specific features of the plan, such as the size of the credit line or whether the consumer pays closing costs for the plan. In such circumstances, in addition to stating the different margins, the creditor would have to specify the amount of the credit line to which the margin is tied, or clearly set forth and describe the feature to which the margin is tied. While this amendment would permit more than one margin to be disclosed, creditors could not merely state a range of possible margins.

This amendment would not require creditors to provide multiple payment or other examples for each margin offered. However, such payment or other examples, which are already required by law and

regulation, would have to reflect a specific margin, one commonly chosen by consumers, that is being offered. The Committee expects the Board to disclose clearly and conspicuously the specific margin used in multiple payment and other examples.

TITLE IV. COUNTERFEIT DETERRENCE ACT OF 1990

Section 401—Short title

This section designates that title as the "Counterfeit Deterrence Act of 1990."

Section 402—Increase in penalties

Section 402 amends section 474 of title 18, U.S.C., by making technical changes. The seventh undesignated paragraph is struck. Fines for each violation of section 474 are raised from not more than $5,000 to not more than $50,000 and prison terms of not more than 15 years to not more than 20 years.

The section expands the definition of the terms "thing" or "things" in subsection 474(b) to include any electronic method used for the acquisition, recording, retrieval, transmission, or reproduction of Treasury obligations. However, the Secretary of the Treasury must establish a system to ensure legitimate use of such electronic methods and retention of reproductions for businesses and others.

Section 403—Deterrents to counterfeiting

Section 403 adds a new section 474A, "Deterrents to counterfeiting of obligations and securities." Subsection 474A(a) raises the penalties for the illegal possession of distinctive paper used for the production of currency or obligations to fines of not more than $50,000 or imprisonment of not more than 20 years, or both.

Subsection 474A(b) imposes the same penalties, as those provided for in 474A(a), for illegal possession of a distinctive counterfeit deterrent that has been adopted by the Secretary of the Treasury or any essentially identical feature or device adapted to the making of any such obligation or security.

Subsection 474A(c)(1) defines "distinctive paper" to include any distinctive medium of which currency is made, whether of wood pulp, rag, plastic substrate or other natural or artifical fibers or materials.

Subsection 474A(c)(2) defines "distinctive counterfeit deterrent" to include any ink, watermark, seal, security thread, optically variable device, or other feature or device—

(A) in which the United States has an exclusive property interest; or

(B) which is not otherwise in commercial use or in the public domain and which the Secretary designates as being necessary in preventing counterfeiting of obligations or other securities of the United States.

Section 404

Section 404 amends section 504 of title 18, U.S.C., to conform the provisions with the holding of the Supreme Court in *Regan* v. *Time, Inc.,* 468 U.S. 641 (1984). This includes striking in paragraph

(1) following subparagraph (D) the text "for philatelic" through "albums."

Paragraph (2) is redesignated as paragraph (3) and a new paragraph (2) is inserted. This new paragraph does not permit the reproduction of illustrations of obligations or other securities, by or through electronic methods unless such use is authorized by the Secretary of the Treasury. The Secretary shall establish a system to ensure that the legitimate use of such electronic methods and retention of such reproductions by businesses, hobbyists, press or others shall not be unduly restricted.

In the redesignated paragraph (3), "but not for advertising purposes except philatelic advertising" is struck, to conform to the holding of *Regan* v. *Time, Inc.*

TITLE V. COIN REDESIGN

Section 501—Denominations, specifications, and design of coins

The requirement that the Eagle appear on the reverse of the quarter dollar and half dollar is eliminated in subsection 5112(d)(1) of title 31, U.S.C. This permits the Secretary to consider any designs for the reverses of these coins.

Section 502—Design changes required for certain coins

The reverses of the half-dollar, quarter dollar, dime coin, five-cent coin, and one-cent coin shall be selected for redesigning. One or more coins may be selected at the same time. However, the first redesigned coin shall have a design commemorating the 200th anniversary of the United States Constitution for a two-year period. After that time period, the Bicentennial coin shall be redesigned according to the provisions of subsection 5112(d) of title 31, U.S.C.

Selection and minting of the first redesigned coin shall take place within one year after the date of enactment of this title. All redesigned coins shall contain the mandated inscriptions as defined in subsection (d)(1) of section 5112.

Section 503—Design on obverse side of coins

Subject to subsection 5112(d), the designs on the obverses of the five coins shall retain the likenesses of those currently on them, and may be considered for redesign. All obverses shall contain the mandated inscriptions as defined in subsection (d)(1) of section 5112.

Section 504—Selection of designs

Design changes authorized for each coin will take place at the discretion of the Secretary of the Treasury, at the rate of one or more coins per year. All redesigned coins will be phased in over six years after the enactment of this title.

For new designs, the Secretary is directed to consider, among other factors, thematic representations of the following constitutional concepts: freedom of speech and assembly, freedom of the press, right to due process of law, right to a trial by jury, right to equal protection under the law, right to vote, themes from the Bill of Rights, and separation of powers, including the independence of

the judiciary. Designs shall be selected by the Secretary upon consultation with the United States Commission of Fine Arts.

Section 505—Reduction of the national debt

Profits received from the sale of uncirculated and proof sets of the redesigned coins will be deposited in the general fund of the Treasury and used to reduce the national debt.

Regulatory Impact Statement

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, in Committee makes the following statement regarding the regulatory impact of the bill. Title I of the bill will strengthen the enforcement powers of the Federal and State depository institutions regulatory agencies by authorizing new penalties for depository institutions and their employees convicted of money laundering and reporting requirements offenses and by increasing cooperation between Federal and State authorities. With respect to nonbank financial institutions, Title II of the legislation requires identification of these entities and authorizes Federal penalties for violations of State laws. These measures will improve compliance with existing law. Title III enables reforms and standardizes disclosures and advertising so that customers can more easily compare yields. Inasmuch as the provisions of this bill will replace many of the varying and sometimes conflicting disclosures, this bill should result in a minimal increase in regulatory burden. The legislation also addresses technical problems which have arisen with the implementation of the Expedited Funds Availability Act. Title IV improves the ability of the Federal government to address counterfeiting. Title V authorizes the redesign of U.S. coins to better reflect current values and accomplishments. Titles IV and V would not increase the regulatory burden imposed by the government.

Changes in Existing Law

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of Rule XXVI, paragraph 12, of the Standing Rules of the Senate, with respect to this legislation.

Cost of the Legislation

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 28, 1990.

Hon. Donald W. Riegle, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for the Money Laundering Enforcement Amendments of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Money Laundering Enforcement Amendments of 1990.

3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs, July 17, 1990.

4. Bill purpose: Title I would require or permit federal banking regulators to terminate the franchise and deposit insurance of any bank, savings association, or credit union convicted of money laundering or cash transaction reporting offenses and to suspend or remove parties affiliated with the institutions who are charged with such offenses.

Title II would direct the Secretary of the Treasury to issue regulations requiring depository institutions to maintain and report information on depositors and their transactions.

Title III would require depository institutions to display standardized information in advertisements for their products. The Federal Reserve Board and the National Credit Union Association (NCUA) would be required to prescribe regulations specifying the information that depository institutions must display in advertisements in order to comply with the legislation. Enforcement of the disclosure requirements would be performed by the Federal Reserve Board, the NCUA, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Trade Commission. This title also would require the Securities and Exchange Commission (SEC) to review whether its regulations provide consumers the opportunity to compare savings and investment options and to modify the regulations if necessary to ensure this opportunity.

Title IV would prohibit reproduction of illustrations of U.S. government obligations or other securities unless authorized under a system to be established by the Secretary of the Treasury.

In addition, the bill would authorize the Secretary of the Treasury to redesign, over a six-year period, the reverse side of the half dollar, quarter dollar, dime coin, five-cent coin, and one-cent coin. The bill would direct that the profits from the sale of uncirculated and proof sets of these coins be deposited in the general fund of the Treasury. The bill also would require the Secretary of the Treasury to report within 90 days to the Congress on changing the color of United States currency for circulation outside the United States.

Finally, the bill would require the Attorney General to determine and report on whether guidelines should be issued for the prosecution of financial institutions to enhance compliance with certain statutes.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Additional cost of minting new coins:					
Estimated authorization level	(1)	1	1	1	1
Estimated outlays	(1)	1	1	1	1
Net additional profit from sale of numismatic coins and interest savings from seigniorage:					
Estimated budget authority		−4	−8	−12	−16
Estimated outlays		−4	−8	−12	−16

[1] Less than $500,000.

The budget impact of this bill falls primarily within functions 800 and 900.

Basis of Estimate: The main budgetary impact of this bill would stem from the coin redesign provisions. Other provisions of the bill are not expected to result in significant additional costs.

Coin Redesign.—Estimates of the costs associated with designing and producing the new coins (about $1 million per year) and of the receipts from the sale of numismatic sets (about $3 million per year) are based on information from the Mint. The Mint estimates are based on the production costs and receipts from similar coins. The costs of minting new coins would be funded through the appropriations process. This estimate assumes that the bill will be enacted before October 1, 1990, and that the Mint would issue the first new coin around January 1, 1992.

Title I.—The bill would allow or require agencies that regulate and insure depository institutions to take certain actions against an institution or affiliated parties convicted of or charged with a money laundering or cash transaction reporting offense. CBO estimates that these provisions would not result in significant costs because the annual number of convictions for these offenses has totalled less than 20 in recent years. It is unlikely that any regulatory action that would result in federal outlays, such as assistance to institutions or payments to depositors, would be based solely on actions authorized by this bill. Nevertheless, these agencies could incur minor additional costs to conduct hearings, review institutions' compliance with disclosure requirements, and notify state officials in certain cases.

Title III.—The Federal Reserve Board would have several new responsibilities under Title III. Since the Federal Reserve produces a budget surplus, which it remits to the Treasury (classified as tax payments), any additional operating costs from these responsibilities could potentially reduce federal tax receipts. However, based on information from the Federal Reserve, any additional costs from Title III would be so small as to have no significant effect on the federal budget. Enforcement of the disclosure requirements contained in Title III is also expected to result in no significant additional costs.

6. Financing mechanism: The provisions requiring coin redesign would affect federal outlays for interest on the public debt. Based on information from the Mint, we expect production of the new coins would result in about $173 million in additional seigniorage

over the 1992–1995 period, thus reducing the Treasury's borrowing needs by a corresponding amount.

Seigniorage is the difference between the face value of a coin and the cost of producing it. When coins are minted, the federal government accrues seigniorage. However, seigniorage is not an on-budget receipt and does not affect the deficit. Rather, it increases the cash balances of the Treasury and reduces the amount the Treasury has to borrow from the public, thereby reducing the government's interest payments.

Because the public's interest in the redesigned coin is likely to result in a greater than normal withdrawal of the new coins from circulation, the Mint would have to produce a larger quantity of coins than if the coins' designs remained unchanged, thereby increasing the amount of seigniorage that the government would accrue. The redesigned coins are expected to produce additional seigniorage above the normal levels by about $38 million in 1992, $48 million in 1993, $54 million in 1994, and $34 million in 1995. The reduction in borrowing that would result from this increased seigniorage would reduce federal interest costs by $28 million over the 1992–1995 period.

7. Estimated cost to State and local governments: To the extent that depository institutions affected by this bill are chartered by state governments, actions taken against the institutions by federal regulators as a result of the bill could impose additional administrative costs to state regulatory agencies. However, CBO estimates that any such costs would be minor.

8. Estimate comparison: None.

9. Previous CBO estimate: On May 9, 1990, CBO prepared a cost estimate for S. 2388, the Yosemite National Park Centennial Medal Act, as approved by the Senate Committee on Banking, Housing and Urban Affairs, May 2, 1990. Because this bill and S. 2388 include identical provisions dealing with coin redesign, the estimates of the budget impact of those provisions are the same.

On April 3, 1990, CBO prepared a cost estimate for H.R. 3848, the Depository Institutions Money Laundering Amendments of 1990. This bill and H.R. 3848 contain similar provisions that would allow federal regulators and insurers of depository institutions to take certain actions against an institution convicted of a money laundering offense. Consequently, the budget impact of these provisions in both bills is identical.

10. Estimate prepared by: James Hearn, Laura Carter, and Mark Booth.

11. Estimate approved by: Charles E. Seagrave for James L. Blum, Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATORS GARN, HEINZ, AND BOND

During the markup of the Expedited Funds Availability amendments, the Banking Committee narrowly rejected an amendment Senator Garn offered to retain the temporary availability period for local checks. The vote on this amendment was 11–10, and the closeness of the margin suggests that this issue should be revisited when the legislation comes to the Senate floor.

Federal Reserve Chairman Alan Greenspan wrote to Senator Garn in support of the amendment to retain the three day availability for local checks, which was reduced to two days on September 1, 1990 when the permanent schedule under the Expedited Funds Availability Act went into effect. The Board of Governors urged the Banking Committee to adopt the amendment because with the permanent schedule in effect, banks are exposed to fraud losses since they are now compelled to make funds available before they know if checks have cleared.

The letter from the Federal Reserve stated,

> The Board is very concerned that depository institutions could be exposed to significant risk of fraud loss under the Act's permanent availability schedule for deposits of local checks, which becomes effective in September 1990. Therefore, the Board urges the Committee to adopt an amendment to retain the current availability for local checks in the permanent schedule. This affords institutions a reasonable opportunity to learn of the return of an unpaid check before being required to make funds available for withdrawal; the availability required in the permanent schedule provides no such protection.

The Federal Reserve also noted,

> More than 75 percent of institutions currently provide availability faster than that required by law, and we expect that they will continue to do so if this amendment is adopted. This amendment is particularly crucial, however, to institutions that are most vulnerable to check fraud, due to the composition of their customer base, and which feel it necessary to place holds on their customers' deposits.

We agree that this amendment will not change the availability policies at the majority of banks, but will give those banks that have problems with fraud the ability to protect themselves from substantial losses.

The only certain way for banks to protect themselves against check fraud is to know if checks have been dishonored before they have to make funds available. With the permanent schedule in

effect, the banks are no longer able to use this method to protect themselves from losses on local checks. According to a March 1990 report to Congress from the Federal Reserve, only 3% of the local checks that clear through the Fed are returned by the time that funds have to be made available for withdrawal.

Some have argued that banks can rely on certain narrow exceptions to the availability schedule to protect themselves. These exceptions (for example, reason to believe that a check is uncollectible) allow banks to hold local checks an additional five days. These exception holds do not apply in all cases, however, and thus do not really offer any systematic protection from check fraud. In any case, it is a perverse policy to force the banks to use the exception holds more often to try to protect themselves when simply retaining the temporary availability for local checks would do the job.

During the committee markup, some argued that the banks are protected from losses because under current law, the Federal Reserve has the authority to suspend the availability schedule if the banks experience "unacceptable" losses. This is not an adequate solution because the losses would have to be incurred to trigger the provision. In addition, it is difficult to collect the data to prove that there have been losses which meet the statutory test.

This amendment is a simple proposition; it merely keeps the temporary availability schedule in place. Both the Federal Reserve and consumer groups testified before the Banking Committee that consumers were satisfied with availability policies under the temporary schedule. The amendment does not allow unjustifiably long check holds. The abuses which inspired the Expedited Funds Availability Act were banks placing ten day holds on cashier's checks—this amendment simply keeps the availability for local checks where it was before September 1st of this year.

We are all concerned about the financial soundness of the banking system; it is vitally important to protect the banks and FDIC fund from losses. Keeping the temporary availability for local checks is a simple and effective way to protect the banking industry from fraud losses without inconveniencing consumers. When this legislation comes to the Senate floor, we encourage our colleagues to reconsider this issue and look for ways to accommodate the Federal Reserve's very legitimate concerns about protecting the banking system.

JAKE GARN.
JOHN HEINZ.
CHRISTOPHER S. BOND.

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